



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



**AN ACT TO INCORPORATE THE NAIROBI
INTERNATIONAL CONVENTION ON THE
REMOVAL OF WRECKS, 2007 INTO THE
LAWS OF SAINT LUCIA AND TO PROVIDE
FOR THE EFFECTIVE IMPLEMENTATION
THEREOF**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
International Maritime Law at the IMO International Maritime Law
Institute**

Submitted By: Allison Hermia Tench (Saint Lucia)

Supervisor: Ms. Sabina Dolic

Academic Year 2018-2019

CONTENTS

A. Explanatory Note

Introduction

1

1. Historical Background

1

1.1. Development of the Nairobi International Convention on the Removal of Wrecks, 2007 (THE WRC)

1

2. Objectives and Structure of the WRC

2

2.1 The affected State

3

2.2 Definition of ship

4

2.3 Definition of a wreck and maritime casualty

4

2.4 Criteria for determining a hazard

5

2.5 Convention area

5

2.6 Measures to report, locate and mark a wreck

6

2.7 Measures to facilitate the removal of wrecks

6

2.8 Liability of the owner

7

2.9 Limitation of liability

8

2.10 Compulsory Insurance or other financial security

10

2.11 Direct action

11

2.12 Time limits

11

2.13 Settlement of disputes

11

3 Rationale For Incorporating The Provisions Of The WRC Into The Laws Of Saint Lucia

12

3.1 Legal and actual situation

12

3.2 Relevant relation

12

4. Methods For Incorporating The Provisions Of The WRC Into The Laws

Of Saint Lucia

13

4.1 Procedure for the incorporation of the WRC into the laws of Saint Lucia

13

4.2 Administrative elements for domestic implementation

14

4.2.1 Authorised personnel

15

4.2.2 Particulars for procedure

15

B. Instrument of accession by Saint Lucia to The WRC

18

C. Law on accession to the WRC

19

D. The Proposed Legislation for implementation

20

1.1 The proposed Subsidiary Act

20

1.2 The Proposed Certificate of Insurance

28

1.3 The proposed Regulation

29

1.4 The proposed Amendment

33

1.5 The Proposed Mariners Notice

37

E. Bibliography

38

INTRODUCTION

The project is to provide a thorough explanation of the provisions of the Nairobi International Convention on the Removal of Wrecks 2007 (The WRC) and a legal interpretation for the effective implementation into the laws of Saint Lucia. This explanatory note has been prepared to provide insight and assist the reader in understanding the act and the reasons behind the formation of the Convention. An explanation of the WRC's essential features will be discussed first, followed by the most important provisions. The remaining part of the explanatory note will present the reasons why Saint Lucia should accede to this Convention and proposes the necessary legislation for the incorporation and implementation of the Convention into the laws of Saint Lucia.

1. HISTORICAL BACKGROUND

Before discussing the regulatory framework of the removal of wrecks, it is imperative to understand the importance of this subject in the international maritime community. Central to the development of the WRC is the *Torrey Canyon* Disaster on 18 March 1967.¹ The disaster highlighted two major issues. First, there was the lack of uniformity among States in their procedures and, secondly States were uncertain about their geographical jurisdictional limits when dealing with wreck removal.² Thereafter, on 13 May 1969 at the 22nd session of the Council of the Inter-Governmental Maritime Consultative Organization (IMCO)³ Germany mentioned the need for a convention that allowed coastal States intervention rights for wrecks beyond their territorial waters.⁴ This issue was added to subsequent agendas but was postponed and never given serious consideration, but in 1993 at the 69th Session of the International Maritime Organization (IMO) legal committee a draft convention on wreck removal was first raised in its current form. At the IMO legal committee 73rd session of 1994 the Netherlands and the United Kingdom submitted a further paper demonstrating that an international treaty on wreck removal was necessary to establish uniform rules for wreck removal operations in international waters.

¹Torrey Canyon' <https://www.theguardian.com/environment/2017/mar/18/torrey-canyon-disaster-uk-worst-ever-oil-spill-50th-anniversary>, accessed 10 February 2019.

² Nicholas Gaskell and Craig Forrest. The Wreck Removal Convention, 2007 (2016) 1-168 LMCLQ 50.

³ International Maritime Organization (IMO) from 1975.

⁴ Richard Shaw. The Nairobi Wreck Removal Convention JIML 13 (2007) 6, 429-439.

The co-sponsors suggested that this would be consistent with the powers of coastal States under Article 221 of United Nations Convention on Law of the Sea III (UNCLOS)⁵ and would fill gaps in the existing international law.⁶ Perhaps, the new insistence was because there was a growing concern by States⁷, shipping and insurance stakeholders of the steady increase in the costs associated with removal of wrecks.⁸ During that period, the approximate financial loss garnered by Germany for removal of wrecks amounted to approximately €6.9 million whilst the Netherlands financial losses amounted to over €7.3 million.⁹ For this reason, there was an appeal to introduce a system that made it possible to recover costs. After more than 25 years of negotiations and delays the WRC was adopted by an international conference on May 18, 2007 and entered into force on April 14, 2015.¹⁰

The Convention's purpose is to establish uniform rules on the quick and effective removal of wrecks beyond territorial waters.¹¹ The Convention is also meant to fill a gap in international law by providing Coastal States with clear mandates of wreck removal when it comes to wrecks situated outside of the territorial sea that pose a hazard to navigation or to the marine environment.¹² Member States are under an obligation to enforce regulations on locating and marking wrecks, as well as making registered owners' financially liable by requiring them to take out insurance or provide other financial security to cover the costs of wreck removal. It also provides States with a right of direct action against insurers.¹³

⁵ Convention on the Law of the Sea 10 December 1982 1833, U.N.T.S 397.

⁶ Patrick Griggs, 'Law of Wrecks' in David Joseph Attard and others (ed), *The IMLI Manual on International Maritime Law - Volume II Shipping Law* (1st edn Oxford University Press, New York 2016) 502

⁷ Richard Shaw, 'The Nairobi Wreck Removal Convention' JIML 13 (2007) 6, 429-439.

⁸ Lloyds, 'The rising cost of shipwreck removal' <https://www.lloyds.com/news-and-risk-insight/news/emerging-risk/emerging-risk-2014/sos-the-cost-of-removing-shipwrecks-is-rising-fast>, accessed 02 February 2019.

⁹ Verena Lahmer, 'The 2007 Nairobi International Convention on the Removal of Wrecks' in Peter Ehlers and Rainer Lagoni (eds), *Enforcement Of International And EU Law In Maritime Affairs* (LIT, 2008d) 150.

¹⁰ International Maritime Organization, 'Nairobi International Convention on the Removal of Wrecks' <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx>, accessed December 25, 2018.

¹¹ IMO Leg/Conf.16/INF.5.

¹² International Maritime Organization, 'Nairobi International Convention on the Removal of Wrecks' <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx>, accessed 10 February 2019.

¹³ *ibid.*

2. OBJECTIVES AND STRUCTURE OF THE WRC

The main objective of the WRC is to establish international rules that provide the rights and obligations of a coastal State and registered owner to take action for removal of a wreck that is within the coastal States' convention area; which may pose a hazard to navigation and the marine environment.¹⁴ The following part of the explanatory note moves on to describe in detail the provisions of the Convention. The Convention contains three main segments:

- a. Segment one: Regulation of the Wreck removal itself
- b. Segment two: Regulations concerning the issues surrounding the removal operation and claims for compensation
- c. Segment three: Regulations concerning financial security

The structure of the Convention includes a preamble and twenty-two articles. Following the preamble, which explains the general aims of the convention, are the various sections.

Part One: Articles one to four contain legal definitions, general principles, the scope of the application and exclusions from the WRC:

- a. Defines a ship and wreck;
- b. Reporting and locating ships and wrecks;
- c. Warnings to mariners and other States about the wreck;
- d. Action by the coastal State to locate the ship or wreck.

Part Two: Articles five to nine contain the legal rules that enable the coastal States to demand the registered owner to remove a dangerous wreck or have it removed by the coastal State and be charged the costs:

- a. Criteria for determining danger posed by wreck;
- b. Environmental criteria as damage if cargo is released.

Part Three: Articles ten to eleven contain the legal basis for the liability of the owner for the costs of measures taken under the regulations of part two.

- a. Measures to facilitate removal of the wreck including rights and responsibilities to remove hazardous ships and wrecks;

¹⁴ Article 2(1) WRC.

- b. Setting out when the registered owner is responsible for removing the wreck and when the State may intervene.

Part Four: Article twelve contains the section regulating the conditions for the compulsory insurance and other issues related to it:

- a. Liability of owner for locating, marking and removing ship and wrecks;
- b. Requirement of registered owner to maintain compulsory insurance or other financial security.

Part Five: Article thirteen contains the regulations relating to claims and final regulations, which cover the settlement of disputes, relationship of the Convention to other Convention and entry into, force.

The Convention is structured similar to an action chart. It begins by outlining the rules about what action has to be taken during a wreck incident and how it should be done. It covers the liability and the claims for costs associated with the removal of wreck.¹⁵ It should be borne in mind that the rules relating to the compulsory insurance is not outlined per se in the action sheet the reason being that the insurance would have already been in place.¹⁶ However, it is included because the primary aim of the Convention is to provide the financial protection that States as Saint Lucia needs because it will not always be in a financial position to afford removal of a wreck.

2.1 The Affected State

Article 1(10) of the WRC describes affected State as the State in whose Convention area the wreck is located. This definition is intended to be explicit about the geographical perimeters of the wreck.

By doing so it distinguishes which coastal State will be responsible for taking

¹⁵ Verena Lahmer, 'The 2007 Nairobi Convention International Convention on the Removal of Wrecks' in Peter Ehlers and Rainer Lagoni (eds), *Enforcement of International and EU Law in Maritime Affairs* (Lit, 2008b) 158.

¹⁶ *ibid.*

proportionate action.¹⁷ This is intended to prevent the possible interference with other State's rights.

2.2 Definition of Ship

Ship has been broadly described in Article 1(2) of the WRC as 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.

2.3 Definition of a wreck and maritime casualty

Since the definition of wrecks vary it is important to clarify that for the purpose of the WRC a wreck is considered as those “following a maritime casualty and comprising a hazard”. Article 1.3 of the WRC defines maritime casualty as 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. This definition is extensive in its application as such it is a common view that it impossible for a wreck not to arise out of a maritime casualty.¹⁸ This definition does not apply to ships that have been sunk for operational reasons, dumped or historic wrecks¹⁹.

The WRC defines a wreck as:

- 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

¹⁷ Article 2(2) WRC.

¹⁸ Verena Lahmer, 'The 2007 Nairobi Convention on the Removal of Wrecks' in Peter Ehlers and Rainer Lagoni (eds), *Enforcement of International and EU Law in Maritime Affairs* (LIT, 2008c) 160.

¹⁹ Norman A. Martinez Gutierrez, 'The Nairobi Convention' in *Limitation of Liability in International Maritime Conventions* (2011) 170.

effective measures to assist the ship or property in danger are not already being taken.²⁰

The definition in Article 4 (c) includes containers that have gone overboard and adrift. The term “effective measures” used in article 4(d) means to preserve the right of a State Party to intervene if it is not satisfied with measures being taken to remove the wreck.²¹

2.4 Criteria for determining the hazard

The term hazard is used by of the WRC to refer to 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.²²

This definition implies that an immediate or prospective danger to navigation or of pollution will represent a “hazard” so as to trigger various rights and obligations under the Convention.²³ Article 1(6) of the WRC lists determining factors, which should be taken into account by an Affected State in determining whether the wreck represents a hazard and includes fisheries activities, economic interests, health of the population, wildlife conservation and off shore and underwater infrastructure. These applications are similar to those in Article 221(1) of UNCLOS²⁴ and Article I (1) of the Intervention Convention²⁵ which also allow an intervention in the case of danger to it’s coastline or related interests.

Although, the WRC and Article 221(1) UNLCOS only demand a danger, the Intervention Convention requires a “grave and imminent danger”, this suggests that the threshold in the WRC is lower than the one set by the Intervention Convention but it corresponds with

²⁰ Article 1(4) WRC.

²¹ Patrick Griggs, 'Law of Wrecks' in David Joseph Attard and others (ed), *The IMLI Manual on International Maritime Law (Volume II)* (Oxford University Press, New York 2016) 506.

²² Article 1(5) WRC.

²³ Patrick Griggs, 'Law of Wrecks' in David Joseph Attard and others (ed), *The IMLI Manual on International Maritime Law Volume II* (Oxford University Press, New York 2016) 507.

²⁴ United Nations, 'Convention on the Law of the Sea' Volume 1833, U.N.T.S 397 (10 December 1982).

²⁵ International Convention relating to intervention on the high seas in cases of oil pollution casualties May 1975 970 (p.211).

UNCLOS.

The term “related interests” in UNCLOS complies with its definition in Article II (4) Intervention Convention. The definition of Article 1(6) of the WRC includes the wording of Article II (4) Intervention Convention but it adds other economic interests of the area. This may be because of the importance of economical damage in general. Regarding offshore and underwater infrastructure, the change is due to the fact that oil pollution will not harm the infrastructure but wreck could.²⁶

2.5 Convention Area

According to the WRC the convention area is 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”.*²⁷

Saint Lucia has declared an Exclusive Economic Zone (EEZ) of less than 200 nautical miles (nm). Saint Lucia had to enter into maritime delimitation agreements to determine the maritime boundary zones with Martinique, Barbados and Saint Vincent because there was less than 400 nm between the countries.

To achieve clarity and uniform application when removing wrecks,²⁸ of the WRC makes it possible for the State to apply the opt-in clause in order to extend the application of the Convention to wrecks located within its territory, including the territorial sea.²⁹ In fact, if Saint Lucia opts-in and a wreck is located within its territorial sea, it can apply the provisions of the WRC to the wreck whether the Flag State is party to the Convention or not.³⁰

Therefore, it would be constructive for Saint Lucia to adopt the opt-in clause and extend the application of the WRC to its territorial sea.

²⁶ Verena Lahmer, (2008) 169.

²⁷ Article 1(1) WRC.

²⁸ IMO Leg 88/13 para. 88.

²⁹ Article 3(2) WRC.

³⁰ Patrick Griggs, 'Law of Wrecks' in David Joseph Attard and others (ed), *The IMLI Manual on International Maritime Law Volume II* (Oxford University Press, New York 2016) 507.

2.6 Measures to report, locate and mark a wreck

Immediately upon a maritime casualty resulting in a wreck within the convention area the master and the operator of a ship are under an obligation to report to the Affected State without delay,³¹ providing the relevant information necessary for the Affected State to determine whether the wreck poses a hazard.³²

The Affected State has the duty to use all practicable means to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.³³ If in that case the information given gives rise to the possibility that the wreck poses a hazard, the Affected State shall ensure that all practicable steps are taken to establish the precise location of the wreck.³⁴

If the wreck is determined to be a hazard, the first duty that arises is that the wreck has to be marked.³⁵ The Affected State shall ensure that all reasonable steps are taken to ensure that the marking conforms to the internationally accepted system of buoyage³⁶ in use in the area where the wreck is located.³⁷ The markings shall be published and circulated as nautical publications.³⁸

2.7 Measures to facilitate the removal of wrecks

Immediately after the wreck has been determined to constitute a hazard, the Affected State has to inform the State of the ship's registry and the registered owner; and 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.³⁹

The Affected State shall set a reasonable deadline for the registered owner to remove the wreck, taking into account the nature of the hazard.⁴⁰ Additionally, the Affected State

³¹ Article 5(1) WRC.

³² *ibid.*, Article 5(2).

³³ *ibid.*, Article 7(1).

³⁴ *ibid.*, Article 7(2).

³⁵ *ibid.*, Article 8(1).

³⁶ Background information on that system is found at' <https://www.iala-aism.org/>, <https://www.iala-aism.org/product/r1001-iala-maritime-buoyage-system>, accessed 10 February 2019.

³⁷ Article 8(2) WRC.

³⁸ *ibid.*, Article 8(3).

³⁹ *ibid.*, Article 9 (1).

⁴⁰ *ibid.*, Article 9(6)(a).

shall 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.⁴¹ The Affected State may remove the wreck itself by the most practical and expeditious means available, if the registered owner does not remove the wreck within the deadline prescribed by the Affected State or if the owner cannot be contacted.⁴² The Affected State may also intervene immediately in circumstances where the hazard becomes particularly severe; the registered owner and ship's registry would have been informed.⁴³ In all cases, the registered owner remains liable for the removal operation.

2.8 Liability of the owner

Removal has been broadened and does not necessarily mean removal of the wreck from the sea; but any form of prevention, mitigation or elimination of the hazard created by a wreck.⁴⁴ The registered owner may contract with any salvor or other person to remove the wreck.⁴⁵ Before the removal process the Affected State may lay down conditions for removal only to the extent necessary to ensure the removal proceeds in a manner that is consistent with considerations of safety and protection of the environment.⁴⁶

In all cases, there is a strict liability on the registered owner for the costs of locating, marking and removal of the wreck.⁴⁷ Notwithstanding this, the registered owner will not be liable if it can be proven, specifically that 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

⁴¹ *ibid.*, Article 9(6)(b).

⁴² *ibid.*, Article 9(7).

⁴³ *ibid.*, Article 9(6)(c)

⁴⁴ *ibid.*, Article 9(7),

⁴⁵ *ibid.*, Article 9(4)

⁴⁶ *ibid.*

⁴⁷ *ibid.*, Article 10(1).

the exercise of that function.⁴⁸

The registered owner will also be free from liability if the liability for costs associated with the removal process would be in conflict with certain other liability conventions that are applicable and in force.⁴⁹ Similar exemptions from liability can be found in Article 3(3)(a) of the International Convention on Civil Liability for Bunker Oil Damage, 2001 (Bunkers Convention).⁵⁰ In Article 7(2)(a) and 14(5)(b) of the International Convention on Liability and Compensation for damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).⁵¹ In Article 4(4)(a) of the International Convention of the establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Fund Convention) as amended and also in Article 3(2) International Convention on Civil Liability for Oil Pollution Damage (CLC).⁵²

The term natural phenomenon of an exceptional, inevitable and irresistible character was used to replace the broader term “act of god”. To rely on this defence the registered owner must prove that the maritime casualty was neither foreseeable for anyone in that area of shipping, nor could it have been avoided by anyone using all technical and nautical skills.⁵³ As such, the WRC has no requirement for negligence of registered owner but as previously mentioned there is a strict liability in tort⁵⁴, this implies that the burden of proof of one of the exemptions lie with the registered owner.⁵⁵ This is because lawmakers recognize that accidents happen and there need to be a system that is swift and reliable to handle claims rather than punish registered owners.

2.9 Limitation of Liability

The WRC retains the registered owner’s right to limit liability by affirming that nothing

⁴⁸ *ibid.*

⁴⁹ Article 11 WRC.

⁵⁰ International Convention on Civil Liability for Bunker Oil Damage 23 March 2001 Leg/Conf.12/19; OJ 2002 L 256/7.

⁵¹ *ibid.*

⁵² International Convention on Civil Liability for Oil Pollution 29 November 1969 973 UNTS 3; 9 ILM 45.

⁵³ David Abecassis, *The law and Practice relating to oil pollution from ships* (Butterworths, 1978) 275.

⁵⁴ Article 10(1) WRC.

⁵⁵ Norman A. Martinez Gutierrez, *'The Nairobi Convention' in Limitation of Liability in International Maritime Conventions* (Routledge, 2012) 173.

in this Convention affects the right of the registered owner to limit liability under applicable law or those provided by international Conventions such as the Convention on Limitation of Liability for Maritime Claims, 1976, (LLMC) as amended.⁵⁶ Accordingly, if the registered owner is held liable he can limit his liability relating to claims for the cost of wreck removal, under applicable law or those provided by international Conventions.⁵⁷

The WRC does not provide limits of liability. So when Saint Lucia accedes to the WRC and a claim arises, the limits of liability under national law shall not exceed an amount calculated⁵⁸ in accordance with article 6(1)(b) of the Convention on Limitation of Liability in Maritime Claims, 1976, as amended.⁵⁹ The registered owner can limit his liability in respect of claims for the cost of removal of wreck provided that such claims have not been excluded from the scope of application of the WRC by means of a reservation.⁶⁰

To prevent registered owners from running away from responsibility, the registered owner is required to have insurance or financial security for unknown amounts, but in practice it is unlikely that insurance and financial security providers would be willing to undertake this type of risk.⁶¹

Saint Lucia is a party to both the LLMC Convention 1976 and LLMC Protocol 1996, so the provisions of both the Convention and Protocol in relation to other State parties bind Saint Lucia.⁶² This means that Saint Lucia is bound to other States that are only parties to the Convention or Protocol not all States collectively.

It is very important to underline that the LLMC Convention⁶³ provides an opt-out provision concerning limitation of liability for wreck removal. Most ratifying States⁶⁴

⁵⁶ *ibid.*

⁵⁷ Article 10(2) WRC.

⁵⁸ Article 12(1) WRC.

⁵⁹ Convention on limitation of liability for maritime claims, 1976 adopted 19 November 1976, entered into force 1 December 1986 1456 UNTS (p.221) (as amended, hereinafter referred to as LLMC Convention).

⁶⁰ Norman A. Martinez Gutierrez, *'The Nairobi Convention'* 174.

⁶¹ *ibid.*

⁶² Article 9 LLMC Protocol 96.

⁶³ Article 18 LLMC Convention.

⁶⁴ IMO. 'Status of Conventions'
<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status/20-2019.pdf>, accessed 20 February 2019.

implemented the reservation so the registered owner will not be able to limit liability because this limitation system would not exist under national laws.⁶⁵ However, Saint Lucia did not exercise the right to make a reservation. In this case no further qualification is needed but the WRC will have to interrelate to the LLMC Convention and 1996 Protocol. Actually, a registered owner may not necessarily be liable for total costs and may invoke his right to limit liability under the LLMC Convention or the 1996 Protocol. His right to limit will be recognized if his claim falls within one of the claims listed in Article 2 of the WRC and his conduct does not fall within Article 4 of the WRC.⁶⁶

As mentioned earlier in section 2.3 of this explanatory note, items as containers falls within the definition of wrecks and the registered owner are liable for removing cargo. In such circumstances, the registered owner may invoke his right to limit under Article 2(1) (e) of the LLMC Convention (as amended) which covers claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship.⁶⁷ Under the current laws (no reservation) in a case where a registered owner successfully invokes his right to limit, his limit of liability would be determined by reference to the tonnage of his ship and calculated in accordance with Article 6(1)(b) of the relevant instrument. Consequently, the fund established under Article 6(1)(b) will not be set up solely for the payment of wreck removal claims but will compare any other property claims arising out of the same distinct occasion.⁶⁸

Considering the high costs associated with wreck removal operations a reservation will prevent the registered owner from limiting his liability. Thus, it is highly recommended for Saint Lucia to implement the reservation to article 2(1)(d) and 2(1)(e) of the LLMC Convention.

As per, Article 7 of the 1996 Protocol

[a]ny state may at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right to exclude the application of article 2, paragraphs 1(d) and (e).

⁶⁵ Article 10(2) WRC.

⁶⁶ Norman A. Martinez Gutierrez, 'Global limitation conventions and particular liability regime' in *Limitation of Liability in International Maritime Conventions*. 197.

⁶⁷ *ibid.*

⁶⁸ *ibid.*

If Saint Lucia exercises this right of reservation the registered owner will have to pay the Saint Lucian Government for all costs associated to the removal of the wreck. The reason for this recommendation is that all claims for pollution must be channelled to registered owners regardless of who is responsible and since these claims fall within the registered owner liability the right to limit liability was meant to act a safety net for large casualties. Whilst a maritime casualty in the EEZ may not necessarily be a hazard to navigation when compared to a maritime casualty in the territorial waters, the fuel or cargo oil may be a threat to the marine environment and so it is imperative to have a reliable system in place to cover clean up and other costs associated with the removal operation.⁶⁹

2.10 Compulsory Insurance or other financial security

Under the WRC any ship of 300 gross tonnage and above and flying the flag of a State Party has a legal requirement to maintain insurance or other financial security.⁷⁰ The WRC also places an obligation on State parties to ensure that under their national laws, that insurance or other financial security is in force in respect of any ship of 300 gross tonnage and above whenever registered, entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.⁷¹ To ensure that registered owners comply with the provisions for financial security, the WRC provides rules of enforcement to flag state⁷² and port state.⁷³ A State Party can prohibit the operation of a ship flying its flag, which does not have the insurance certificate.⁷⁴ Likewise, a State party can ensure that no ship of 300 gross tonnage or more enters or leaves a port of its territory without insurance certificate.

The registered owner will have to provide the Affected State's authority with proof of insurance or other financial security for the removal of the wrecks. The insurance or financial security has to cover an amount equal to the limits of liability under the national law but not exceeding the amount calculated with article 6(1)(b) of the LLMC

⁶⁹ Lloyds. 'The challenges and Implications of removing wrecks in the 21st Century' <https://www.lloyds.com/news-and-risk-insight/risk-reports/library/technology/wreck-report>, accessed December 25, 2018.

⁷⁰ Article 12(1) WRC.

⁷¹ Ibid., Article 12(12).

⁷² Ibid., Article 12(11).

⁷³ Ibid., Article 12(13).

⁷⁴ Ibid., Article 12(11).

Convention (as amended).⁷⁵ With respect to the issue of the certificate, the Minister assigned with the responsibility of Shipping will be under an obligation to nominate the certifying authority that will be responsible for attesting that insurance or other financial security is in force in accordance with the WRC. Currently, Registrar of Ships in the Division of Maritime Affairs (DMA) is responsible for issuing certificates that are similar in nature hence they would be the most appropriate body to be assigned. DMA is supported and administered by Saint Lucia Air and Sea Ports Authority (SLASPA) a statutory body operating within the Ministry of Infrastructure, Ports, Energy and Labour in Saint Lucia.

2.11 Direct Action

Claims for any cost under the WRC may be brought against the registered owner. The WRC makes provision for such claims to be brought directly against the insurer or party providing financial security.⁷⁶ It should be noted that the liability of the insurer or party providing financial security would be limited to the value of the cover specified in the insurance policy.⁷⁷ However, the insurer or party providing the financial security can raise the defence that the casualty leading to the wreck was caused by the wilful misconduct of the registered owner.⁷⁸ The right to limit liability was designed to be unbreakable because there are limits for insurance to provide rates and they need to know in advance what the risks are and it is important to know limits of liability. Insurance contract is a promise by the insurance provider to save the registered owner from any losses that would be caused by the registered owners conduct so because of this promise to protect loss the registered owner would have to abandon any rights he hold in favour of the insurance provider to allow the Insurance provider to claim against any party.⁷⁹

Time Limits

The right to recover costs will be extinguished unless an action is brought within three years from the date when the hazard has been determined in accordance to the WRC. The

⁷⁵ Article 12(1) WRC.

⁷⁶ *ibid* Article 12(10).

⁷⁷ *ibid*.

⁷⁸ *ibid*.

⁷⁹ Lloyds, 'The challenges and Implications of removing wrecks in the 21st Century' in <https://www.lloyds.com/news-and-risk-insight/risk-reports/library/technology/wreck-report> edn March 2013, 48.

maximum time for a claim for costs is six years from the date of the maritime casualty that resulted in a wreck.⁸⁰

2.13 Settlement of Disputes

For disputes between States in relation to interpretation or application of the WRC, the States in dispute have 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*.⁸¹

If the dispute is not resolved 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 whether or not the parties to the dispute are State Parties to United Convention on the Law of the Sea 1982*.⁸²

3. RATIONALE FOR INCORPORATING THE PROVISIONS OF THE WRC INTO THE LAWS OF SAINT LUCIA

3.1 Legal and factual situation

St Lucia is sea-locked and relies heavily on sea transport and cruise tourism. In 2015, there was 388 cruise calls, cargo traffic of 32,085 TEUs, Total cargo handled (containerized and bulk) was 480,770 tonnes equivalent to 30% of the total Organisation of Eastern Caribbean States (OECS) traffic.⁸³ Thus, it is imperative to protect the safety of navigation and the marine environment.

The past decade there has been an increase in the of number of maritime casualties that has led to wrecks in Saint Lucia's territorial waters.⁸⁴ Most recent in March 2018, the responsible agencies had to engage in efforts to remove a sunken cargo ship in the Port of

⁸⁰ Article 13 WRC.

⁸¹ Article 15(1) WRC

⁸² Article 15(2) WRC.

⁸³ Caribbean Development Bank. 'Towards Greater Efficiency: The Transformation of the Caribbean Maritime Port Services Industry' <https://www.caribank.org/publications-and-resources/resource-library/thematic-papers/towards-greater-efficiency-transformation-caribbean-maritime-port-services-industry>, accessed 15 January 2019.

⁸⁴ The Royal Institute of Naval Architects. 'Container Ship Angeln Casualty' https://www.rina.org.uk/Angeln_Accident.html, accessed 25 January 2019.

Soufriere.⁸⁵ One of the biggest concerns was that the ship had sunk in an area that was deemed as environmentally sensitive. For this reason, it is imperative to enact legislation that provides protection and preservation of the marine environment. Also, with the growth of intercontinental trade, the movement of ships continue to increase there is the probability that ship accidents in Saint Lucia's waters will remain steady. If the problem persists the marine environment in Saint Lucia is likely to face continuous damage from sunken and grounded ship.⁸⁶

The problem with wrecks is that firstly, they create a hazard to navigation putting other ships and the lives of crew in danger. Secondly, the nature of the cargo can be hazardous creating another danger to not only the marine environment but to human beings who become exposed to oil spills from a maritime casualty. Thirdly, there is a high cost associated with removal of wrecks and this is becoming more evident as Salvors have to exercise more care to the environment when removing a ship as such the cost of the equipment has become more costly. Lastly, registered owners tend to abandon wrecks then seek compensation through their insurance leaving the burden of removal of wreck on the State.

The current provisions of Part 15 Shipping Act Cap 13.25 (SA)⁸⁷ Wreck and Salvage, fails to hold the ship-owner to the highest standard of accountability. Additionally, there is limited utility where the wreck is a hazard to the environment. Saint Lucia needs to ensure the protection and sustainability of the environment by providing protection from pollution through implementation of the WRC. The implementation of the WRC will act as a preventative measure in the event of a natural disaster, which is likely to cause widespread damage to vessels. The government will already have measures in place to tackle wrecks and abandonment.

Altogether, the proper implementation of the WRC will grant the authorities a wider range of control over the wreck removal operation.

3.2 Relevant relation

⁸⁵ HTS St. Lucia. 'Cargo vessel sinks in Port Soufriere'
<https://www.htsstlucia.org/cargo-vessel-sinks-in-port-soufriere/>, accessed January 25 2019

⁸⁶ *ibid*

⁸⁷ Shipping Act 23 September 2000 Chapter 13.27, No. 16

As mentioned in section 2.11 of these explanatory notes Saint Lucia will have a right of direct action. This is an important inclusion in the Convention and means in the event that the registered owner cannot be located a claim for recovery of costs can be made directly to the insurance providers. For this reason, it is important to accede to the WRC.

4. METHODS FOR INCORPORATING THE PROVISIONS OF THE WRC INTO THE LAWS OF SAINT LUCIA

4.1 Procedure for the incorporation of the WRC into the laws of Saint Lucia

Considering that Saint Lucia is not a party to the WRC,⁸⁸ the WRC has to be acceded by adoption of law on the accession to the WRC and with the relevant instruments of accession. Once acceded and implemented into Saint Lucia's law the provisions of the WRC becomes binding for everyone. Saint Lucia has no specific law, which gives formal responsibility to the Minister to enter into international conventions. However, Section 62 of the Constitution of Saint Lucia⁸⁹ gives the Prime Minister the authority to assign portfolios and grant authority to the Minister in a Cabinet Memorandum. Thus, the Minister has the authority to negotiate and decide whether to sign, accede and implement an international Convention or set the parameters within which, Saint Lucian delegation can operate in relation to international conventions. The laws relating to Merchant Shipping in Saint Lucia are in two main forms.

The first is Primary legislation, which is The Shipping Act of Saint Lucia Cap 13.27 (SA)⁹⁰ as amended and given effect by way of an Act of Parliament.

The second form of maritime legislation, Regulations is made by virtue of delegation of authority in the primary legislation to enable the Minister to make such regulations. The SA was adopted and published in 1995.⁹¹ The SA is a legal instrument, which covers all aspects of the maritime field it sets the parameters for operating a registry to comply with the rules and regulations governing navigation. The SA also seeks to foster a cohesive

⁸⁸ IMO, 'Status of Conventions'

<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202019.pdf>, accessed 14 March 2019.

⁸⁹ The St. Lucia Constitution Order 20 December 1978 1978 No. 1901.

⁹⁰ Government of Saint Lucia, 'Shipping Act' in Volume Chapter 13.27, No. 16 (23 September 2000).

⁹¹ St. Lucia Shipping Act <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104923/128157/F-819581281/LCA104923.pdf>, accessed 25 January 2019.

relation between human activities, the impact of operation of all vessels within Saint Lucia's inland and territorial waters to marine ecosystem whilst protecting the marine environment from pollution.

As mentioned in section 3.1, the recent events involving wrecks in Saint Lucia's waters have heightened the need to have in place a regulatory system to address such matters. There is existing regulation in Part 15 of the SA that provides procedures for removing a wreck in territorial waters but in order to implement the WRC into Saint Lucia's laws the following will be done. First Saint Lucia has to accede to the WRC, after accession, Saint Lucia will implement the Convention by virtue of a separate Wreck Removal Act. There will also be a regulation or Statutory Instrument, which will be the guidelines that prescribe how the provisions of the WRC will be applied. Additionally, sections 353 to 375 of the SA will have to be repealed because it contradicts the provisions of the WRC.

Parliament shall make the Wreck Removal Act and regulation laws by an exercise of bills passed by the Senate and the House and assented to by the Governor General. Upon submission of the bill to the Governor General he shall signify that he assents. When the Governor General assents to a bill that has been submitted to him in accordance with the provisions of the Constitution the bill shall become law and the Governor General shall thereupon cause it to be published in the Official Gazette as law. Since the procedure for making an amendment to the SA is the same as enacting new legislation the process of repealing sections 353 to 375 of the SA will be carried out collectively.

There will also be a mariner's notice to inform registered owners and stakeholders that Saint Lucia has become a party to the WRC and their obligations.

This method of implementation using a separate Wreck Removal and regulation was chosen over making an amendment to the SA because it provides several advantages:

- a) One of the main weaknesses of the current legal system in Saint Lucia is that amendments can be very time consuming and it may take months even years before an act is updated by way of legislation. For this reason, the method of having a subsidiary legislation along with regulations enables a more effective method of making amendments because the Minister would only be required to make an order in council and publish the amendment in the official gazette to make it a law. This

method has been proven to be effective, as it is being utilized by Australia, in implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage⁹², which shares the same common law background as Saint Lucia.

- b) Some of the terms defined in the SA is general in its application and applies to varying sections whereas the meaning in the WRC speaks specifically to the WRC. Typical example is the definition of *Ship*, which cannot be merged to have the same effect. On the other hand, not only is it impractical but also confusing to have two definitions of *ship* within the SA.
- c) A more efficient method of implementing international provisions into national laws would mean that Saint Lucia would always be using the most recent laws thus strengthening the purpose of IMO to have uniform application of international laws.
- d) By becoming a party to International Conventions and failing to implement them effectively within reasonable timeframes is a breach of obligations by Saint Lucia but when there is a method to make quick amendments this is a reflection of Saint Lucia acting in good faith to comply with international obligations and relationships.

Since a reservation to limit liability has not been made and the WRC retains the right of registered owner to limit liability, the regulation will refer to *Part 17 Limitation and Division of Liability* in relation to registered owner liability. The regulation will provide the form of the Certificate of insurance or other form of financial security in its Annex.

4.2 Administrative elements for domestic implementation

4.2.1 Authorized personnel

The Saint Lucia Division of Maritime Affairs (DMA) was established in 2000 following an amendment to the SLASPA Act No, 10 of 1983 and the Shipping Act No.11 of 1994.

⁹² IMO, 'International Convention on Civil Liability for Bunker Oil Damage' in Volume Leg/Conf.12/19; OJ 2002 L 256/7 (23 March 2001).

The DMA is supported and administered by the Saint Lucia Air and Sea Ports Authority (SLASPA) a statutory body operating within the framework of the Ministry for Infrastructure, Ports, Energy and Labour. Thus the Minister is responsible for exercising power by giving general directions over the accession and implementation of the SA, so Minister shall have the same meaning as assigned in the SA.

The competent authority referred within this drafting project will be DMA. The competent authority will carry out a wide range of tasks including issuing certificates to be carried on the vessel. Conducting Port and Flag State inspections; surveys and ensuring the nation's maritime activities are conducted in accordance with national and international maritime safety and pollution prevention standards.

The Receiver of Wrecks will be responsible for conduction the procedural aspects of the WRC.

4.2.2 Particulars for procedure

The WRC goes a long way in filling the legislative gap in the current international community by providing a set of uniform international rules for aimed at ensuring prompt and effective removal of wrecks located in Saint Lucia's internal waters, territorial sea and an area beyond and adjacent to the territorial sea of Saint Lucia.

The WRC will be applied to the territory of Saint Lucia including its territorial waters. As per Article 3(2) THE WRC the Government of Saint Lucia will have to notify the Secretary-General of IMO that Saint Lucia has decided to extend the application of the WRC to its territorial waters at the time of expressing its consent to be bound by this convention or at anytime thereafter. By virtue of Article 4(4)(a) the following provisions of the convention shall not apply in its territory including the territorial sea:

- a) Article 2, paragraph 4;
- b) Article 9, paragraphs 1,5,7,8,9 and 10 and
- c) Article 15.

The WRC applies to an area beyond and adjacent to the territorial sea of Saint Lucia to be determined by Saint Lucia 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. For Saint Lucia, it is less than 200 nautical miles an area determined by agreement with coastal states beyond and adjacent to Saint Lucia in accordance to Exclusive Economic Zone and Continental Shelf of the Maritime Areas Act of Saint Lucia.⁹³

The Receiver of Wrecks (the receiver) may take measures in relation to the removal of a wreck, which poses a hazard in the Convention Area. Measures taken by the receiver shall be proportionate to the hazard. The master and operator of a ship flying a Saint Lucian flag are required to report to the receiver without delay when that ship has been involved in a maritime casualty resulting in a wreck. It will be an offence punishable by a fine for the master and operator to not report a wreck.

Upon becoming aware of a wreck, the receiver shall use all practicable means to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency. If the receiver has reason to believe that a wreck poses a hazard, the receiver shall ensure that all practicable steps are taken to establish the precise location of the wreck.

The receiver shall ensure all reasonable steps are taken to mark the wreck in conformity with internationally accepted system of buoyage and publish navigation warnings in the local newspaper, official gazette and website. If the receiver determines that a wreck constitutes a hazard, the receiver will be under an obligation to inform the State of the ship's registry and the registered owner then proceed to consult with the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck. The receiver shall set a reasonable deadline within which the registered owner must remove the wreck.

The registered owner shall provide the receiver with evidence of insurance or other financial security and may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before the removal commences the receiver may lay down conditions for such removal only to the extent necessary to

⁹³ St Lucia Maritime Areas Act 1988 Chapter 1.16 S.I 55 Article 9 (1).

ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

The receiver may intervene to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment. The registered owner will bear the costs of locating, marking and removing the wreck, unless the registered owner can prove one of the listed exceptions. The registered owner will not be able to limit liability under the 1996 LLMC Protocol because Saint Lucia will implement the reservation.

Any claim for costs may be brought directly against the insurer or person providing financial security for the registered owner's liability. Rights to recover costs shall be extinguished unless an action is brought within three years from the date the hazard has been determined. Furthermore no case shall be brought after six years from the date of the maritime casualty that resulted in the wreck. The regulations apply to all ships regardless of their flag. Thus, the registered owner of any national ship, ship of another contracting State or ships of non-party State of 300 gross tonnage and above, entering or leaving a port of Saint Lucia or arriving at or leaving from an offshore facility is under an obligation to maintain insurance or other financial security. Certificates shall be issued by the Registrar of ships, Division of Maritime affairs under the delegated authority of the Minister of Infrastructure, Ports, Energy and Labour.

On application by the registered owner if the Registrar of Ships is satisfied that the insurance or financial security in place will cover the liability under the WRC a certificate will be issued. However, if the Registrar of Ships is not satisfied that this is the case he or she may refuse to issue a certificate. The Registrar of Ships may also issue certificates for a ship registered in State that is not a party to the WRC.

The certificate shall be in the form of the model in the WRC and shall be deposited with the Division of Maritime Affairs who keeps the record of the ship's registry or if the ship is not registered in a State Party to the WRC with the authorities issues or certifying the certificate. No ship shall be permitted to operate unless a certificate has been issued and carried on board the ship. Certificates issued and certified under the authority of a State Party shall be accepted and regarded as having the same force as certificates issues or certified by Division of Maritime Affairs.

**B. INSTRUMENT OF ACCESSION BY SAINT LUCIA TO THE NAIROBI
INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS, 2007**

To be deposited with the Secretary General of the IMO, London

INSTRUMENT OF ACCESSION

WHEREAS the Nairobi International Convention on the Removal of Wrecks, was adopted at Nairobi, Kenya on 18 May 2007 and came into force on 14 April 2015;

AND WHEREAS Article 17 of the Convention provides that after the 18 November 2008 this Convention shall be open for accession by all States;

NOW THEREFORE, the Government of Saint Lucia, having considered the Nairobi Convention on the Removal of Wrecks, **HEREBY ACCEDES** thereto and undertakes faithfully to observe all its provisions and to carry out all the stipulations therein contained;

IN ACCORDANCE, with paragraph 3 of Article 3 of the Nairobi Convention on the Removal of Wrecks, Saint Lucia declares that it will apply this Convention to wrecks located within its territory, including the territorial sea;

IN WITNESS WHEREOF, I Allen Chastnet, Prime Minister of Saint Lucia having signed this Instrument of Accession and have affixed thereto the official seal.

DONE at [place], on [day] [month] [year]

[Seal]

[Signature]

Allen Chastnet

Prime Minister of Saint Lucia

**C. LAW ON ACCESSION TO THE NAIROBI INTERNATIONAL
CONVENTION ON THE REMOVAL OF WRECKS, 2007**

LAW ON ACCESSION TO THE NAIROBI INTERNATIONAL CONVENTION ON
THE REMOVAL OF WRECKS, 2007

Article 1

By virtue of this Law, the Nairobi International Convention on the Removal of Wrecks, 2007, which was adopted at Nairobi, Kenya on 18 May 2007 and came into force on 14 April 2015; in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic; the Government of Saint Lucia formally declares its accession to the Nairobi International Convention on the Removal of Wrecks, 2007 on [day] [Month] 2019.

Article 2

The texts of the English language are set out in schedules 1 and 2;

Article 3

The Minister responsible for Infrastructure, Ports, Energy and Labour, shall be entitled to execute and implement the provisions of the Convention.

Article 4

This Law shall enter into force following its publication in the official gazette.

[day] [month] 2019
[number]

Governor General of Saint Lucia
Emmanuel Neville Cenac

D. THE PROPOSED LEGISLATION FOR IMPLEMENTATION

1.1 The proposed Subsidiary Act



Merchant Shipping (Removal of Wrecks) Act, 2019

SAINT LUCIA

No. ____ of 2019

ARRANGMENT OF ACT

Act

PART 1: PRELIMINARY

1. Citation and Application
2. Interpretation

PART 2

ENFORCEMENT

3. Objectives and General Principles
4. Application
5. Exclusions
6. Reporting Wrecks
7. Locating of Wrecks
8. Marking of Wrecks
9. Removal by Registered Owner
10. Measures to facilitate the removal of wrecks
11. Liability for Costs
12. Limitation Period

PART 4

INSURANCE CERTIFICATES

13. Compulsory insurance or other financial security
14. Issue of Certificate by the Competent Authority
15. Fees

PART 5

JURISDICTION

16. Time limits
17. Settlement of Disputes

PART 3

MISCELLEANOUS

Certificate of financial security

Shipping (Removal of Wrecks) Act

SAINT LUCIA

STATUTORY INSTRUMENT No. ____ of 2019

[day] [month] 2019

In exercise of the powers conferred upon the Minister by section 491 of the Shipping Act Cap 13.25, the Minister for shipping makes these act:

PART 1

PRELIMINARY

1. Citation and Application

- 1) The title of this Act is Merchant Shipping (Removal of Wreck) Act 2019 and shall come into force on [day] [month] [year].
- 2) Subject to the provisions of these regulations the Convention and any amendments thereto, shall, unless otherwise provided in these regulations and notwithstanding the provisions of any other law, form part of the Laws of Saint Lucia and shall apply to all Saint Lucian ships wherever they may be and to all

other ships while they are in Saint Lucian waters as determined by the Convention.

2. Interpretation

1) In these Act, unless the context otherwise requires -

“The Act” means The Shipping Act (Cap 13.23, 2000);

“Affected State” means the State in whose Convention Area the wreck is located;

“Competent Authority” means Saint Lucia Air and Sea Ports Authority established by section 2 of the Authority for Saint Lucia Air And Sea Ports Authority Act and in relation to other States means the national maritime administration maintained by those States;

“Convention” means the Nairobi International Convention on the Removal of Wrecks, signed in Nairobi on 18 May 2007, including any amendment or Protocol related thereto as may from time to time be ratified, acceded to or accepted by the Government of Saint Lucia and other instruments, standards and specifications of a mandatory nature related thereto adopted or developed by the International Maritime Organization;

“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:

Provided that, in respect to St. Lucia shall mean an area extending to twenty-four nautical miles from the baselines from which the territorial waters are measured in accordance with the Maritime Zones Act, or any other area as may be determined from time to time by the Minister, in accordance with International Law;

“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.

“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.

“the Minister” means the Minister responsible for shipping and includes any person acting under his authority;

“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;

“Organization” means the International Maritime Organization;

“Receiver of Wreck” means the person ascribed as the Receiver of Wreck for Saint Lucia under the Shipping Act Cap 13.23, 2000

“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.

Provided that, 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;

“Registrar of Ships” means the Registrar of Ships appointed under section 4 of the Act and any other person acting under his authority;

“Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly;

“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;

“Territorial Waters” shall have the same meaning as is assigned to it in the Maritime Zones Act;

“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.
- 2) Unless otherwise defined in the Act or in this Act, or unless the context so requires, words and expressions used in this Act shall have the same meaning assigned to them in the Convention.

- 3) Any reference in this act to an International Convention or its related protocol or code shall include reference to any amendments to such convention, protocol or code accepted by the Government of Saint Lucia.

3. Objectives and General Principles

- 1) Saint Lucia may take measures in accordance with the Act in relation to the removal of a wreck, which poses a hazard in the Convention Area of Saint Lucia.
- 2) Measures taken by Saint Lucia 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) Saint Lucia shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than Saint Lucia.

4. Application

For the purpose of the Act this section shall apply where a ship has been involved in a maritime casualty whereby the ship or materials on board the ship becomes a wreck in the Convention Area and the Receiver of Wreck determines that the wreck poses a hazard.

5. Exclusions

- 1) This section shall not apply to:
 - (a) measures taken under the International Convention relating to the Intervention on the High Seas in Cases of 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;
 - (b) any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service.

6. Reporting Wrecks

- 1) Where a ship has been involved in a maritime casualty the Master or operator of the ship must report the wreck to the competent authority without delay.
- 2) A report made under this Act must include the information mentioned in paragraph (2) of Article 5 of the Convention.

- 3) A person who without reason fails to report a wreck commits an offence and on summary conviction is liable to a fine not exceeding 10,000 units.

7. Determination of Hazard

Where a wreck report has been made under this Act, the Receiver of Wreck shall determine whether a hazard exists by taking into account the criteria in Article 6 of the Convention.

8. Locating Of Wrecks

- 1) Upon becoming aware of a wreck, Saint Lucia 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 Saint Lucia has reason to believe that a wreck poses a hazard, all practicable steps shall be taken to establish the precise location of the wreck.

9. Marking Of Wrecks

- 1) If Saint Lucia determines that a wreck constitutes a hazard, all reasonable steps shall be 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) Saint Lucia shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

10. Removal By Registered Owner

1. This Act shall apply where -
 - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the Convention area; and
 - (b) the competent authority has determined that the wreck poses a hazard.
2. the Receiver of Wreck must take all reasonable steps to give a notice (a 'wreck removal notice') requiring the registered owner to comply with the obligations imposed on registered owners by paragraph 2 and 3 of Article 9 of the Convention.
3. The notice must be in writing and must –
 - (a) specify the deadline set under paragraph 6(a) of Article 9 of the Convention for the removal of the wreck; and

- (b) inform the registered owner of the other matters set out in paragraph 6(b) and 6(c) of Article 9 of the Convention.

11. Measures To Facilitate The Removal Of Wrecks

- 1) This Act shall apply if the competent authority has given a registered owner a wreck removal notice;
- 2) The competent authority may impose conditions as to the removal of the wreck in accordance with paragraph 4 of Article 9 of the Convention.

12. Liability For Costs

1. This Act shall apply if-
 - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the Convention area; and
 - (b) costs have been incurred by the competent authority.
2. The person who incurred the costs is entitled to recover them from the ship's registered owner unless the owner proves that an exception set out in paragraph 1(a), (b) or (c) of Article 10 of the Convention applies.
3. The registered owner is not liable for costs under this Act if or to the extent that liability would conflict with –
 - (a) a convention listed in paragraph 1 of Article 11 of the Convention; ^[1]_[SEP]
 - (b) an enactment implementing such a convention; or ^[1]_[SEP]
 - (c) any other provision specified by order made by the ^[1]_[SEP]competent authority. ^[1]_[SEP]
4. Where the registered owner of each of two or more ships is liable for costs under this regulation, but the costs for which each is liable cannot reasonably be separated, the registered owners shall be jointly liable for the total costs.
5. This Act does not prevent the exercise of the right (if any) to limit liability.

13. Limitation Period

An action to recover costs under this Act may not be brought after the end of whichever of the following ends earlier –

- (a) the period of three years beginning with the date on which a wreck removal notice was given in respect of the wreck; and ^[1]_[SEP]
- (b) the period of six years beginning with the date of the accident which resulted in

the wreck. [11]
[SEP]

14. Compulsory Insurance Or Financial Security

- (a) A ship of a gross tonnage of 300 or more shall not enter or leave a port in Saint Lucia, and neither shall any Saint Lucian ship enter any port of any State unless such ship is in possession of an insurance cover evidenced by the certificate referred to in this act.
- (b) If a ship enters or leaves (or attempts to enter or leave) a port in Saint Lucia without the required certificate attesting that insurance is in place, the master and operator will commit an offence. The offence is to be punishable by a fine, to a maximum of 10,000 units, on summary, conviction, or to no maximum on conviction on indictment.
- (c) The vessel shall be detained if either the insurance or wreck removal insurance certification requirements are not complied with. Part 19 of the Act already provides for the enforcement of any detention under the Act.
- (d) The master of the ship shall ensure the wreck removal insurance certificate is carried on board, and to produce it when requested. Failure to comply is an offence liable on summary conviction to a fine not exceeding 5000 units.

15. Issue of Certificate By The Competent Authority

- 1) The authority for the purpose of issuing the certificate attesting that an insurance cover or other financial security is in force, as referred to in the Convention, in respect of ships registered in Saint Lucia shall be the Registrar of Ships who shall determine the conditions of issue and validity of such certificate, and, in respect of ships registered in a State not party to the Convention shall be the said Registrar of Ships who shall have such powers as aforesaid, or the appropriate authority of a State Party to the Convention.
- 2) Where the competent authority is satisfied on the application for such a certificate as is mentioned in regulation 9 in respect of a Saint Lucian ship or a ship registered in any country that is not a State party that there will be in force throughout the period for which the certificate is to be issued a contract of insurance or other financial security satisfying the requirements of the Convention, the Registrar of Ships may issue such certificate.
- 3) The Certificate shall be cancelled if at anytime the ship:
 - (a) ceases to comply with the requirements for qualifications;
 - (b) appears to have been lost or broken.

Upon cancellation the registered owner shall deliver the cancelled certificate. If the certificate is not delivered then the registered owner commits an offence and where upon conviction will not exceed 2500 units.

16. Fees

- 1) The fee to be charged for issuing the certificate referred to in this Act shall be five hundred eastern Caribbean dollars (\$500), in respect of a ship registered in Saint Lucia.
- 2) The fee to be charged for issuing the certificate referred to in this Act shall be one thousand fifty eastern Caribbean dollars (\$1050), in respect of a ship not registered in Saint Lucia.

17. Duty To Ensure Compliance

It shall be the duty of the registered owner of the ship to ensure that the ship is in compliance with the provisions of this Act. Any person, who fails to observe the provisions of this Act, shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall, for each offence, be liable to a fine not exceeding 10,000 units.

18. Settlement Of Disputes

Any dispute regarding the implementation or interpretation of the Convention shall be resolved in accordance with the provisions of the Convention.

1.2 The Proposed Certificate of Insurance



Saint Lucia

DEPARTMENT OF MARITIME AFFAIRS

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:

Official No.:

Call Sign:

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:

Certificate No:

Duration of Security:

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

This certificate issued under the authority of the Saint Lucia Government

It will remain in force until

Issued on at

The undersigned declares that he is duly authorized by the said Government to issue this certificate.

Made this [day] [Month] 2019

[Name]
[Official capacity]

1.3 The proposed Regulations



Shipping (Removal of Wrecks) Regulations

SAINT LUCIA

No. ____ of 2019

ARRANGMENT OF REGULATIONS

Regulation

PART 1: PRELIMINARY

1. Citation
2. Interpretation

PART 2 ENFORCEMENT

3. Reporting Wrecks
4. Determination of Hazard
5. Locating of Wrecks
6. Marking of Wrecks
7. Removal by Registered Owner
8. Measures to facilitate the removal of Wrecks
9. Liability for costs
10. Limitation Period

PART 4

INSURANCE CERTIFICATES

11. Compulsory insurance or other financial security
12. Issue of Certificate by the Competent Authority
13. Fees

PART 5

JURISDICTION

14. Duty to ensure compliance

Shipping (Removal of Wrecks) Regulations

SAINT LUCIA

STATUTORY INSTRUMENT No. ____ of 2019

[day] [month] 2019

In exercise of the powers conferred upon the Minister by section 491 of the Shipping Act Cap 13.25, the Minister for shipping makes these regulations:

PART 1

PRELIMINARY

1. Citation

- 1) These regulations may be cited as Shipping (Removal of Wrecks) Regulations.

2. Interpretation

- 1) In these regulations, unless the context otherwise requires -

“The Act” means The Merchant Shipping (Removal of Wrecks) Act, 2019;

3. Reporting Wrecks

For the purpose of section 6 of the Act a report must be made without delay providing the name and the principal place of business of the registered owner and all the relevant information necessary to determine whether the wreck poses a hazard.

4. Determination of Hazard

Where there ship is wrecked the Receiver of Wreck must determine if it is a hazard in accordance to Section 7 of the Act.

5. Locating Of Wrecks

- 1) For the purpose of section 8 of the Act the receiver of wreck 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; and
- 2) If the wreck poses a hazard, all practicable steps shall be taken to establish the precise location of the wreck.

6. Marking Of Wrecks

Where a wreck constitutes a hazard, all reasonable steps shall be taken by the Receiver of Wreck to mark the wreck in accordance to section 9 of the Act.

7. Removal By Registered Owner

Where the competent authority is satisfied that the wreck poses a hazard he or she shall notify the owner in writing, requiring the registered owner to comply with the provisions of section 10 of the Act.

8. Measures To Facilitate The Removal Of Wrecks

Where it becomes necessary for the State to intervene in the removal of the wreck the competent authority shall follow the prescribed procedure in section 11 of the Act.

9. Liability For Costs

1. This regulation applies if-
 - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in the Convention area; and
 - (b) costs have been incurred by the competent authority.

2. The person who incurred the costs is entitled to recover them from the ship's registered owner unless the owner proves that an exception set out in paragraph 1(a), (b) or (c) of Article 10 of the Convention applies.
3. The registered owner is not liable for costs under these regulations if or to the extent that liability would conflict with –
 - (a) a convention listed in paragraph 1 of Article 11 of the Convention; [SEP]
 - (b) an enactment implementing such a convention; or [SEP]
 - (c) any other provision specified by order made by the [SEP]competent authority. [SEP]
1. Where the registered owner of each of two or more ships is liable for costs under this regulation, but the costs for which each is liable cannot reasonably be separated, the registered owners shall be jointly liable for the total costs.
2. This regulation does not prevent the exercise of the right (if any) to limit liability.

10. Limitation Period

Claims under section 13 of the Act, for recovery of costs associated with locating, marking or removing a wreck are subject to a time limit. The claim must be brought within 6 years of the accident or, if sooner, within 3 years from the date on which a wreck removal notice was issued.

[SEP]

11. Compulsory Insurance Or Financial Security

A ship of a gross tonnage of 300 or more shall not enter or leave a port in Saint Lucia, and neither shall any Saint Lucian ship enter any port of any State unless such ship is in possession of an insurance cover evidenced by the certificate. Failure to comply is subject to the provisions of section 14 of the Act.

12. Issue Of Certificate By The Competent Authority

For the purpose of section 15 of the Act, the Registrar of Ships must issue a certificate on application by a national or foreign vessel of 300 gross tonnage and above who have met the provisions of section 15 of the Act.

13. Fees

- 1) The fee to be charged for issuing the certificate referred to in regulation 9 shall be five hundred eastern Caribbean dollars (\$500), in respect of a ship registered in Saint Lucia.
- 2) The fee to be charged for issuing the certificate referred to in regulation 9 shall be

one thousand fifty eastern Caribbean dollars (\$1050), in respect of a ship not registered in Saint Lucia.

14. Duty To Ensure Compliance

It shall be the duty of the registered owner of the ship to ensure that the ship is in compliance with the provisions of these regulations. Any person, who fails to observe the provisions of these regulations, shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall, for each offence, be liable to a fine not exceeding 10,000 units.

1.4 The proposed Amendment

SAINT LUCIA



CHAPTER 13.27

SHIPPING (AMENDMENT) ACT, 2019

No. ____ of 2019

[Published in the official gazette Vol. ____ No. ____ dated ____, 2019]

SAINT LUCIA SHIPPING (AMENDMENT) CAP 13.27 ACT, 2019

ARRANGEMENT

SECTIONS

1. Short Title
2. Interpretation
3. Repeal of Section 368



I Assent,

Emmanuel Neville Cenac
Governor General of Saint Lucia

[Day] [Month] 2019

SAINT LUCIA
Saint Lucia Shipping (Amendment) Cap 13.27 Act, 2019

NO. __ OF 2019

AN ACT to amend the Saint Lucia Shipping Cap. 13.27 Act 16 of 2000

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

1. Short Title and Commencement

1. This Act may be cited as Saint Lucia Shipping (Amendment) Act, 2019.
2. This act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

2. Interpretation

In this Act, “the principal Act” means the Saint Lucia Merchant Shipping Act, 2000.

3. Repeal of Section 368

Section 368 of the principal Act repealed

SCHEDULE

Passed in the House of Assembly this day of , 2018.
Speaker of the House of Assembly.

Passed in the Senate this day of , 2018.
President of the Senate

1.5 The proposed Notice

Wreck Removal Convention

Merchant Shipping Notice No. _____

*Notice to Registered Owners, Ship Operators, Managers,
Masters, Owners' Representatives and Recognized Organizations*

The Division of Maritime Affairs would like to remind all concerned that Saint Lucia acceded to the Nairobi International Convention on the Removal of Wrecks, 2007.

To this effect, the shipping community is reminded that the registered owner of seagoing ships, including fishing vessels, private and commercial yachts, of 300 gross tonnage and above are required to maintain an insurance cover or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Convention.

Ships that do not hold evidence in the form of a certificate issued by a competent authority attesting such financial security, as required by the Convention, may experience delays.

The Registrar of Ships shall issue such certificate upon presentation of a valid blue card issued by an approved Protection and Indemnity Club addressed to:

Registrar of Ships
Division of Maritime Affairs
Saint Lucia Air & Sea Ports Authority
P.O Box 651 Manoel Street Castries Saint Lucia
Telephone number: 758 457 6151/6152

The appropriate fee for the issuance of said certificate attesting financial security shall be of \$500.00 in respect of Saint Lucian flagged ships and \$1050.00 in respect of ships flagged with a non-State party to the Convention.

In order to ensure the continuous uninterrupted operation of ships to which the Convention applies, after [day] [Month] [2019], those concerned are hereby reminded to submit the relevant documents to the Division of Maritime Affairs as soon as possible. Ships not furnished with the relevant certificates may experience delays after [day] [Month] 2019.

Director, Division of Maritime Affairs

[Day] [Month] [2019]

BIBLIOGRAPHY

ACTS

Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC)

International Convention on Civil Liability for Bunker Oil Damage, 2001 (Bunkers)

International Convention on Civil Liability for Oil Pollution, 1969 (CLC)

International Convention relating to Intervention on the High Seas in cases of oil pollution casualties, 1969 (Intervention)

Nairobi International Convention on the Removal of Wrecks, 2007 (WRC)

Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976

Saint Lucia Shipping Act, 2000

Saint Lucia Constitution Order, 1978

Saint Lucia Maritime Areas Act, 1988

United Nations Law of the Sea Convention (UNCLOS)

BOOKS

Abecassis, David, *The law and Practice relating to oil pollution from ships* (Butterworths, 1978).

Griggs, Patrick, 'Law of Wrecks' in Attard, David Joseph and others (eds), *The IMLI Manual on International Maritime Law - Volume II Shipping Law* (1st edn Oxford University Press, United Kingdom 2016).

Gutierrez, Norman A. Martinez, 'The Nairobi Convention' in *Limitation of Liability in International Maritime Conventions* (Routledge, 2012).

Lahmer, Verena, 'The 2007 Nairobi International Convention on the Removal of Wrecks' in Ehlers, Peter and Rainer Lagoni (eds), *Enforcement Of International And EU Law In Maritime Affairs* (LIT, 2008)

JOURNAL ARTICLES

Gaskell, Nicholas and Craig Forrest, 'The Wreck Removal Convention, 2007' (2016) 1-168 LMCLQ 50.

Shaw, Richard, 'The Nairobi Wreck Removal Convention (2007) 6, 429-439 The Journal of International Maritime Law.