



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, PROVIDING
PENALTIES FOR THE VIOLATIONS HEREOF
AND FOR OTHER PURPOSES**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
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EXPLANATORY NOTE

I. THE 2007 NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS

Since the dawn of humankind, the development of every civilization has been brought about by the various innovations made by man that helped shape the kind of culture or society it has today. Since the time man has learned to trade for goods, transportation has always been the key ingredient that has brought about the rapid expansion of human settlements. Trade via sea navigation has considerably fueled this expansion and then became the primary mode of bringing goods from one country to another until the advent of air transportation.

From the time man learned to navigate the seas, and began exploring places beyond the boundaries of their own settlements, man learned about the dangers of travelling through the vast oceans. Many a vessel, including its crew and cargo have been lost at sea in pursuit of exploration and conquest of lands and territories. Wreck removal did not really gain much importance back then when men sailed on wooden ships unless it was obstructing a vital sealane or passage. But with the advent of motorised ships now powered with bunker oil or fuel, shipwrecks have now become more and more, not only a risk to navigation, but also a threat to the marine environment as well.

It was not until the occurrence of the *Torrey Canyon* incident that the discussions on coming up with an international convention on wreck removal began to take shape. The tanker ran aground in the morning around 9 a.m. Saturday, March 18, 1967. At a speed of 17 knots, she struck hard on the Pollard Rock on the Seven Stones Reef, between the Isles of Scilly and Lands End. Oil immediately began to spew out from the ruptured

tanks. Not only was the ship aground on a hard rock, but her hull had been deeply penetrated in a number of places.¹

In the hope that the estimated 40,000 tons of remaining crude oil would be burnt off, eight Royal Navy Buccaneers and three RAF Hunters armed with bombs and rockets were dispatched to destroy her.² The methods used in trying to contain the incident were largely ineffective and the oil that spilled went on to pollute beaches in several countries. The best known result of the *Torrey Canyon Disaster* in the field of international law was undoubtedly the 1969 Convention on Civil Liability for Oil Pollution Damage (the CLC), followed by the 1971 Fund Convention.³ Another important consequence was the adoption of the 1969 International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties.⁴

In 1974, the IMO Legal Committee, discussed the possibility of coming up with a convention on wreck removal, when it undertook a review of the national law in a number of member States with the intention of developing an international instrument, however, this did not go further at that time.⁵ Nothing was done on the topic of wreck removal until in 1993 a draft convention was made during the 69th session of the IMO Legal Committee. Then in 1994, during the 70th session of the Committee, Germany, the Netherlands and the United Kingdom submitted a further paper on this topic, arguing that an international treaty on wreck removal was necessary to establish uniform rules for wreck removal operations in international waters.⁶

Again, discussion on wreck removal was stalled due to other issues that were thought to be of more pressing concern than wreck removal. Finally, after a long hiatus, in 2006, a small working group from the CMI restarted the review of the text of the draft convention and proceeded to propose some amendments, and in another meeting in

¹ The Torrey Canyon, <http://www.oilpollutionliability.com/the-torrey-canyon/>, accessed 14 January 2015

² Ibid.

³ Shaw, Richard, The Wreck Removal Convention, *The Journal of International Maritime Law*, 2007, Vol. 13, Issue 6, p. 430.

⁴ Ibid.

⁵ Ibid. p. 431.

⁶ Ibid.

London was conducted on March of 2007 and significant progress was made on the contentious issues surrounding the drafting of the wreck removal convention. This eventually led to a successful resolution of the contentious issues and the convention on wreck removal was finally adopted in Nairobi in that same year.

The 2007 Nairobi International Convention on the Removal of Wrecks adheres to the three principles espoused in the 1994 working group paper produced by Germany, the Netherlands and the United Kingdom, namely:

1. The grant of rights to the coastal State to remove the wreck from its EEZ if it represents a hazard to safe navigation or to the marine environment;
2. Strict liability on the shipowner for the costs of reporting, marking and removing a wreck if required to do so by the coastal state;
3. Compulsory insurance and direct action against insurers, up to the 1996 LLMC Limit, modelled on the equivalent provisions of the 1969 CLC.⁷

The Convention is composed of twenty-one articles. Article 1 of the Convention, contains the definitions, paragraph 1 of which defined what is considered as the “Convention Area”, which is the area covering the EEZ of a member State or if there is no defined EEZ, the equivalent to 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. This definition however, may include the internal waters and the territorial waters of a State, if such State would exercise its option to expand the application of the Convention to its internal and territorial waters.

⁷ Shaw, Richard, *The Wreck Removal Convention*, *The Journal of International Maritime Law*, 2007, Vol. 13, Issue 6, p. 433.

It likewise defined what is a “ship” to mean a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and also floating platforms. However, it excluded from the definition those platforms that are on location engaged in the exploration, exploitation or production of seabed mineral resources. The definition of the ship under this paragraph is comprehensive enough to include all types of ships and other floating platforms that does not fall under the exception.

Under Article 1, a “Wreck” must follow a “maritime casualty”, and such is to refer to 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. “Wreck” is likewise broadly defined under this Convention, to include not only any part of a sunken or stranded ship, including any object that has been on board such a “ship” but also any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea. Thus any cargo washed overboard from a vessel, without mishap to the vessel itself, will fall under the definition of a wreck, as will all floatsam, jetsam and lagan.⁸

The Convention then goes on to define what is to be considered as “hazard”, which is also couched in broad terms to include not only maritime perils but also threats or harm to the marine environment. Other significant definitions are those of the “registered owner” which 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, and the “Operator of the ship” which 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.

⁸ Forrest, Craig, At last: a convention on the removal of wrecks, *The Journal of International Maritime Law*, Vol. 14 Issue 5, 2008. p. 396.

Also significant is the definition on what is the “Affected State” and it refers to the State in whose Convention area the wreck is located. This means that the affected State will be that State in whose EEZ the wreck is located.

Article 2 of the Convention refers to the Objectives and General Principles. This article sets out the rights as well as the limitations to the exercise of such rights by the coastal State to intervene in cases of wrecks occurring within its EEZ.

Article 3 is the Scope of Application. It sets out the scope of application of the Convention only to wrecks found within the Convention Area. It likewise provides the option for the coastal States to extend the application of the Convention to wrecks found within its internal waters and territorial seas subject to the provisions as set out in Article 4. This option is exercised by notifying the Secretary General of the IMO of the State member to opt to extend the application of the Convention to its internal waters and territorial sea.

Article 4 regards the Exclusions. This article provides that the provisions of this Convention do not apply to measures already being taken under other Conventions such as the 1969 Intervention Convention and the like. This article likewise removes from its application warships or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

Articles 5, 6, 7, and 8 are considered as the substantive articles of the Convention and these articles details the actions and other preventive measures that must be done by the State members or the Affected State in cases of wrecks within their EEZ. These precautions refer to the identification of the wrecks, assessment of the extent of the damage or threat of damage in accordance with the general criteria as set out in the Convention. It also provides for the location of the wrecks, marking such wrecks and the publication of the location of such wrecks in the notices to mariners.

Article 9 sets forth the procedures to facilitate the removal of the wrecks once it is deemed to be a hazard. It also provides that it shall be the registered owner of the ship that will remove the wreck which is deemed to be a hazard by the coastal State. In cases however of the failure of the registered owner to remove the wreck, or in case the owner cannot be contacted, the coastal or affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

Article 10 refers to the liability of the owner in cases of wreck covered by this Convention. Subject to the provisions of Article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively. However it also provides for the exception to the liability under this article, in case the wreck was caused under any of the following circumstances:

(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;

(b) was wholly caused by an act or omission done with intent to cause damage by a third party; or

(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

Furthermore, under this article the registered owner may also be allowed to limit his liability under other national or international regimes if applicable. It likewise provides that the provisions of this Convention shall not prejudice the right of recourse against third parties.

Article 11 of the Convention provides for the exceptions from the applicability of this Convention if it will be in conflict with the following:

(a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;

(b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;

(c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963 as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or

(d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended.

The exceptions will only apply if the above conventions are applicable and in force.

Article 12 speaks of the compulsory insurance or other fund security which is required to be maintained by shipowners of 300 gross tonnage and above, to cover liability under this Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended. A certificate attesting that insurance or other financial security is in force, is required to be carried on board the ship, such certificate shall be issued by appropriate authority of the State of the ship's registry after determining that the requirements as may be required under this Article have been complied with.

Furthermore, under this article, State parties may authorize an institution or organization duly recognized by it to issue the required certificate to be carried on board the ship. It further provides that an insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the

period of validity of the insurance or security specified in the certificate. Also, under this article, it is mentioned that any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. The insurer or any other person, upon which a claim was made under this Convention may avail of the defences that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even in cases where the registered owner may not be entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained under this article.

This Article likewise obligates the State Parties not to permit any ship entitled to fly its flag to operate at any time unless a certificate has been issued in accordance with the provisions of this article. Likewise, subject to the provisions of this article, each State party is mandated to ensure, under its national law, that insurance or other security to the extent required hereunder is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.

Article 13 of the Convention provides for the time limits for the right to recover costs under this Convention. It provides for a three-year time limit from the date the hazard was determined, to file an action to recover costs under this Convention otherwise the same will be extinguished. However, in no case shall an action be brought after six years from the occurrence of the maritime casualty that resulted to the wreck.

Article 14 on the other hand, provides for the mechanism for the amendment of this Convention in which not less than one-third of the State parties must make a request for a conference to be convened for the purpose of introducing amendments or revisions.

Article 15 provides for the settlement of disputes between State parties in which they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In case no settlement shall be reached, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply mutatis mutandis, whether or not the States party to the dispute are also States Parties to the United Nations Convention on the Law of the Sea, 1982.

II. THE NEED FOR THE ENACTMENT OF A NATIONAL LAW THAT WILL INCORPORATE THE PROVISIONS OF 2007 NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS.

Currently, there is no specific law in force in the Philippines that deals with the removal of wrecks as envisioned by the WRC. In fact the regulations involving wreck removal that is currently in place is found in several laws such as the existing Act No. 2616 or Salvage Law of the Philippines, the Philippine Code of Commerce, and the Philippine Coast Guard Law of 2009. These laws however, refer to salvage and not to wreck removal as envisaged by the Convention.

A cursory reading of the above-mentioned laws would quickly reveal that without a new legislation, the provisions of the Convention cannot be given effect as the laws currently in place all refer to salvage and the entitlement of a reward, and are not drafted for the purpose of removing wrecks which pose a hazard to navigation or which threatens the marine environment. Furthermore, except for the Philippine Coast Guard Law which was enacted in 2009, the Salvage Law and the Code of Commerce were enacted way, way back and that its provisions may already be found obsolete in the face of current developments in the field of maritime law. Even the Coast Guard Law which is a recent enactment, still follows the provisions of the Salvage Law when it comes to removal of wrecks.

At present, Philippine maritime authorities, such as the Coast Guard are rendered helpless to compel shipowners from removing wrecks even if they pose a risk to navigation considering that there is no provision under the Salvage Law that would allow the Coast Guard to require shipowners to compulsorily remove a wreck without interfering with the proprietary rights of the shipowners. While there are other laws that safeguard the safety of the marine environment, even these laws are vague as to whether shipowners can be forced to remove the wrecks. In view of the lack of clear-cut laws regarding wreck removal, this has resulted to much finger-pointing as to who has the responsibility of removing wrecks that poses a hazard to navigation and the marine environment. Furthermore, the prohibitive costs of removing a wreck have likewise prevented shipowners from exerting efforts to have the same removed.

The possibility of having to spend huge costs for the removal of the wrecks is one of the main reasons why shipowners would rather abandon their ships rather than remove them. While the Convention did not establish its own system of limitation of liability, it nevertheless provided that nothing in the Convention shall affect the right of the registered owner to limit his liability under any applicable national or international regime such as the LLMC Convention (as amended).⁹ It therefore follows that the

⁹Martinez Gutierrez, Norman A., *Limitation of Liability in International Maritime Conventions: The Relationship*

registered shipowner may be able to limit his liability, applying the provisions of the LLMC Convention (if applicable), with regards to claims arising from this Convention, however, such right to limit under the LLMC Convention is subject to the reservation provision of the said Convention particularly on its scope of application. The registered shipowner may also limit his liability for claims for the costs of removing the wrecks under applicable national legislation on limitation of liability.

The Philippines, however, has no national legislation regarding limitation of liability and neither is a signatory to the LLMC Convention. In this respect, there are several options for the Philippines, it can accede to the LLMC Convention without any reservation, in which case the limitation of liability under its provisions will apply, or it can accede to the LLMC Convention, but making a reservation under Article 18 thereof, in respect to Article 2(1)(d) and (e), and thus the liability for claims on the removal of wreck or cargo will remain strict and unlimited. There is a third option however, and that is for the Philippines to opt to accede to the LLMC Convention and still make a reservation, but instead of having an strict and unlimited liability, the Philippines may enact a legislation that will provide for the limits of liability for wreck removal. This option has been done in other states. If a State which is a Party to the WRC has made a reservation to the LLMC Convention, and has enacted special legislation on the removal of wrecks, there would be strict liability under the Convention, and although the LLMC Convention will not apply, limitation of liability would be possible if, and to the extent that, it is recognized under relevant national law.¹⁰ It is submitted that this third option may be the better option for the Philippines. However, in view of the fact that the Philippines have yet to accede to the LLMC Convention, the legislative draft may provide for a transitory article that may set the limits of the liability for wreck removal pending accession to the LLMC Convention.

The WRC provides for a legal basis for a coastal State to act when a wreck which lies beyond its territorial sea threatens the marine or coastal environment, the safety of

between Global Limitation Conventions and Particular Liability Regimes, Routledge, London and New York, 2011, p. 171.

¹⁰ Ibid. p. 200.

lives, goods, and property at sea, or poses a hazard to the safety of navigation.¹¹ While the scope of its application is mainly on the EEZ, the provision of opting to extend its application to the internal and territorial waters will definitely work to the advantage of the Philippines considering that most of the wrecks that have posed a hazard to navigation and to the marine environment have occurred if not in the territorial waters, but in the internal waters of the Philippines. The incorporation of the provisions of the Convention will also harmonize the conflicting and scattered laws of the Philippines concerning wreck removal.

It is thus envisioned that through the enactment of a legislation that incorporates the provisions of the WRC, the government, through its dedicated maritime agencies, such as the Philippine Coast Guard and the Maritime Industry Authority, will now be empowered to have a wreck removed through the shipowner's expense, and at the same time balance it with the interests of the shipowners to be able to recoup their expenses in having the wrecks removed through the employment of a compulsory insurance system. This system likewise provides for a mechanism in which the maritime agencies of the Philippines may go after the insurers of the ship in case the shipowner disappears or for any reason cannot be located or determined.

III. THE METHOD OF DRAFTING AND ENACTING A NEW PHILIPPINE LAW ON WRECK REMOVAL BY ADOPTING AND INCORPORATING THE 2007 NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS.

The WRC shall be absorbed and integrated in the Philippine laws by drafting and enacting a new law on wreck removal. Such law will be distinct from the existing Act No. 2616 otherwise known as the Salvage Law of the Philippines as well as provisions in

¹¹ Forrest, Craig, At last: a convention on the removal of wrecks, *The Journal of International Maritime Law*, Vol. 14 Issue 5, 2008. p. 395.

the Philippine Code of Commerce. The enactment of a new legislation will give way to a new law that will provide clear-cut policies as to the authority to remove wrecks falling under this Convention, who has the responsibility of removing the wrecks, what will be the consequences for failure to remove such wrecks and the establishment of a compulsory insurance to cover the costs of removing such wrecks.

At present, the Philippine government has an organized Coast Guard which is mandated to regulate activities in the maritime jurisdiction of the Philippines, among those is to regulate salvage activities which currently includes wreck removal. The enactment of a new law on wreck removal will certainly amend the present provisions of the Coast Guard Law on salvage and will give it the necessary power and authority to enforce the provisions of the new law on wreck removal.

The initial step in drafting a new law on wreck removal in the Philippines is to divide the proposed statute into several articles. The first article will be the general provisions and the same is divided into sections that contains the provisions such as the short title of the proposed statute, to include the declaration of State policy. The declaration of State policy will provide for the general objectives of the proposed statute and what the statute seeks to remedy. Under this article will also be the provision incorporating the WRC, and the definition of terms.

The second article provides for the scope of application of the proposed statute and the exclusion, which will give immediate clarification as to what vessels are covered as well as those which are exempted from the application of this proposed law.

The third article will now provide for the substantive provisions of the statute regarding any wrecks. It will provide for the manner in which any sighting of a wreck will be reported as well as the form and contents of the report.

The fourth article will provide for the role and function of the Philippine Coast Guard as the agency of the Philippine government mandated to supervise and monitor the conduct of wreck removal operations. This article will institutionalize the Convention's provisions that the coastal State shall have the power to take measures necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

The fifth Article will discuss the liabilities of the shipowner under this proposed statute and the exceptions to such liabilities. Considering that the Philippines is not a signatory to the LLMC Convention, there are several options that the Philippines may have if it is to enact a legislation on wreck removal. Since it is not a signatory to the LLMC Convention, the Philippines may opt not to limit the liability in terms of wreck removal under this proposed Act. In this case, the Act shall maintain the strict liability under the Convention and there will be no limitation of liability. In case the Philippines decides to accede to the LLMC Convention, it may do so without any reservation and thus the limits of liability under the LLMC Convention will find application in this proposed legislation. The third option is to accede to the LLMC Convention and make a reservation on the applicability of such Convention on removal of wrecks and enact a national legislation providing for limitation of liability for wreck removal.

The sixth article will discuss the role of the Maritime Industry Authority on the administrative aspect that is geared to the establishment of rules relating to the compliance to the requirements under this Act as well as issuance of the necessary certificates and accreditation of institutions and organizations which the said agency may in the future delegate or allow to perform this function.

Claims and actions will be in the seventh article which will include the jurisdiction of the admiralty courts in the Philippines. Admiralty jurisdiction pursuant to the Philippine Rules of Court is vested to the Regional Trial Courts which are distributed in all geographical districts in the Philippines.

In the proposed Statute, there will be three (3) government instrumentalities that will be playing important roles in matters related to wreck removal. The Philippine Coast Guard will be in charge of supervising and monitoring the wreck removal, the Maritime Industry Authority will take charge of the administrative aspect to ensure compliance with the statutory requirements under this proposed Act. While the Regional Trial Court shall exercise admiralty jurisdiction in the resolution of any controversy related to it.

Penalty provisions shall be included in the new law as mechanism for the enforcement of certain rules by the State. Thus, penalties for failure of shipowners to comply to the provisions of the new law relating to removal of wrecks as may be provided hereunder shall be stipulated.

A separability clause and repealing clauses shall be included as provisions of the statute. The separability clause shall have the function of preventing the nullification of the whole law if one or some of the provisions are declared unconstitutional by the court after a legal action. The repealing clause shall expressly repeal, amend or modify the whole or part of other laws that may be inconsistent with the new law on wreck removal.

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ANNEX 1

DRAFT INSTRUMENT OF ACCESSION

MALACAÑANG

MANILA

INSTRUMENT OF ACCESSION

TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, that whereas, the International Convention on the Removal of Wrecks (WRC) was adopted in Nairobi, Kenya on 18 May 2007 and entered into force on 14 April 2015;

WHEREAS, the Philippines is a member of the International Maritime Organization;

WHEREAS, the WRC endeavors a) to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved, b) the States Parties to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

WHEREAS, Article 17(a) of the WRC provides that “States may express their consent to be bound by this Convention by: (i) signature without reservation as to ratification, acceptance or approval; or (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or (iii) accession.”

WHEREAS, Article 18(2) of the WRC provides that “this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.”

NOW THEREFORE be it known that **I, BENIGNO SIMEON COJUANGCO AQUINO III**, President of the Republic of the Philippines, having considered the above-mentioned Nairobi International Convention on the Removal of Wrecks, for and in behalf of the Government of the Republic of the Philippines, do hereby accept and accede to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Republic of the Philippines be affixed.

GIVEN under my hand at the City of Manila, this ___ day of _____, in the year of our Lord, two thousand and fifteen.

BENIGNO SIMEON COJUANGCO AQUINO III

ANNEX 2

**DRAFT INSTRUMENT OF ACCESSION WITH
RESERVATION**

MALACAÑANG

MANILA

INSTRUMENT OF ACCESSION

TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, that whereas, the Convention on the Limitation of Liability for Maritime Claims (1976 LLMC) was adopted in London, United Kingdom on 19 November 1976 and entered into force on 1 December 1986;

WHEREAS, on 2 May 1996, the Protocol of 1996 to amend the Convention on the Limitation of Liability for Maritime Claims of 19 November 1976, and came into force on 13 May 2004;

WHEREAS, the Philippines is a member of the International Maritime Organization;

WHEREAS, the 1976 LLMC as amended endeavors the State Parties to determine by agreement certain uniform rules relating to the limitation of liability for maritime claims;

WHEREAS, Article 16(2) of the 1976 LLMC as amended provides that “All States may become parties to this Convention by: (a) signature without reservation as to ratification, acceptance or approval; or (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or (c) accession.”

WHEREAS, Article 17(1) of the 1976 LLMC as amended provides that “This Convention shall enter into force on the first day of the month following one year after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.”

NOW THEREFORE be it known that **I, BENIGNO SIMEON COJUANGCO AQUINO III**, President of the Republic of the Philippines, having considered the above-mentioned Convention on the Limitation of Liability for Maritime Claims, for and in behalf of the Government of the Republic of the Philippines, do hereby accept and accede to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

BE IT FINALLY KNOWN, that pursuant to Article 18 hereof, I, for and in behalf of the Government of the Republic of the Philippines, hereby register **reservation** in respect to Article 2(1)(d) and (e) of this Convention.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Republic of the Philippines be affixed.

GIVEN under my hand at the City of Manila, this ___ day of _____, in the year of our Lord, two thousand and fifteen.

BENIGNO SIMEON COJUANGCO AQUINO III

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH (15th) CONGRESS
First Regular Session

House Bill No. _____

=====

Introduced by: Hon. _____

**“An Act to Incorporate the Nairobi International Convention on Removal of
Wrecks, 2007, Providing Penalties for the Violations thereof and for Other
Purposes”**

Be it enacted by the Senate and the House of Representatives in Congress,
assembled:

ARTICLE I
General Provisions

Section 1. *Short Title* - This Act shall be known as the “Philippine Wreck Removal Act of 2015”.

Section 2. *Declaration of Policy* - It is hereby declared as the policy of the State to promote the prevention and control pollution as a result of maritime casualties of ships, which create hazards to human health, harm and destroy living marine resources, damage coastal communities, or interfere with the legitimate uses of the internal and territorial waters and the exclusive economic zone of the Philippines.

The State needs to create the appropriate institutional arrangements, to set up an effective regulatory framework to ensure effective and efficient removal of wrecks, as well as to establish a system of accountability and transparency and ensure payment of appropriate compensation for the costs of the removal of such wrecks by the persons or entities found to be liable under this Act.

Section 3. *Adoption and Incorporation of the Wreck Removal Convention*
– Subject to the provisions of this Act, the Convention, as defined hereunder, shall form part of the laws of the Republic of the Philippines.

Section 4. *Definition of Terms* - For the purposes of this Act, following terms are defined, as:

- (a) “Coast Guard” means the Philippine Coast Guard.
- (b) “Convention” means the Nairobi International Convention on the Removal of

Wrecks, 2007.

- (c) “Court” means the Regional Trial Court having jurisdiction over the place where the wreck is found.
- (d) “Hazard” means any condition or threat that:
 - (1) poses a danger or impediment to navigation; or
 - (2) may reasonably be expected to result to damage to the environment as to mean substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) “MARINA” means the Maritime Industry Authority
- (f) “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.
- (g) “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.
- (h) “Registered owner” means the person or persons, both natural and juridical, registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company.
- (i) “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.
- (j) “Vessel” means any ship or craft, or any structure capable of navigation.
- (k) “Wreck”, following upon a maritime casualty, means:
 - (1) a sunken or stranded ship; or
 - (2) any part of a sunken or stranded ship, including any object that is or

has been on board such a ship; or

(3) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

(4) 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.

ARTICLE II

Scope of Application

Section 5. *Application* – This Act shall cover vessels within the internal navigable waters and territorial sea and the Exclusive Economic Zone (EEZ) of the Philippines.

Section 6. *Exclusion* - The following are excluded from the coverage of this Act:

- (a) non-motorized *bancas*¹², sailboats and other waterborne craft of less than three (3) gross tons capacity.
- (b) government owned vessels engaged in public and non-commercial functions;
- (c) platforms and drilling units when on location engaged in the exploration, exploitation or production of sea-bed mineral resources.
- (d) Wrecks involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

ARTICLE III

REPORTING OF WRECKS

¹² Filipino traditional boat.

Section 7. *Obligation to report wrecks* - It shall be the obligation of all masters of vessels, both domestic and foreign, to report to the Coast Guard without delay, when that ship has been involved in a maritime casualty resulting in a wreck whether in the internal waters, territorial seas or the EEZ of the Philippines. In case of inability of the master to report such maritime casualty resulting in a wreck, through reasons other than his own negligence, such obligation shall rest upon the operator of the vessel. Such report shall be made within 24 hours from the time of the occurrence of such maritime casualty resulting in a wreck.

Section 8. *Manner and form of Reporting* - Such reports shall be made by the master or the operator of the vessel or his duly authorized representative, in writing, in the form of a Marine Protest and shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Coast Guard to determine whether the wreck poses a hazard. Such report may also be submitted in electronic form pending submission of the formal Marine Protest.

Section 9. *Contents of the Report* - The report shall contain the following details:

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

ARTICLE IV

ROLE OF THE COAST GUARD

Section 10. *Criteria for determination of Hazard* - Immediately upon receipt of the Report from the Master or from the operator of the vessel that his ship has been involved in a maritime casualty resulting in a wreck, the Coast Guard shall determine if such wreck constitutes a hazard to navigation or a threat to the marine environment.

In determining whether a marine casualty resulting in a wreck poses a hazard to navigation or a threat to the marine environment, the following criteria shall be taken into consideration:

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

(o) any other analogous circumstances that might necessitate the removal of the wreck.

Section 11. *Locating Wrecks* - The Coast Guard shall, upon determination that a wreck poses a hazard to navigation or a threat to the marine environment, immediately issue a Notice to All Mariners (NOTAM) to inform all seafarers of the nature and location of such wreck. Such NOTAM shall likewise include information as to whether such wreck constitutes a hazard to navigation or a threat to the marine environment.

Section 12. *Marking of Wrecks* - The Coast Guard shall ensure that all wrecks determined to be a hazard to navigation or a threat to the environment, be properly marked in accordance to the internationally accepted system of buoyage in use in the area where the wreck is located.

To this effect, the Coast Guard shall issue the appropriate regulations for the proper marking of wrecks, which shall be duly published for general circulation.

Section 13. *Measures to facilitate removal of Wrecks* - If the Coast Guard determines that a wreck constitutes a hazard, it shall immediately:

(a) inform the registered owner/s of its findings, or if the wreck is a foreign vessel, inform the Flag State of the ship's registry; and

(b) proceed to consult with the registered owner/s or the Flag State where the ship is registered regarding measures to be taken in relation to the wreck.

It shall be the registered owner who shall have the primary responsibility to remove the wreck determined to constitute a hazard. When a wreck has been determined to constitute a hazard, the registered owner, or any other interested party, shall provide the Coast Guard with evidence of insurance or other financial security as required by Article VII, Section 18.

The registered owner may contract with any salvor duly accredited by the Coast Guard, to remove the wreck determined to constitute a hazard, on behalf of the owner. Before such removal commences, the Coast Guard shall issue the regulations governing such removal to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

Upon commencement of the removal of the wreck located in the EEZ, the Coast Guard shall supervise the operations to ensure the safety and protection of the marine environment. If, in the exercise of sound judgment, the Coast Guard finds that the removal operations does not conform to the regulations duly issued, the Coast Guard may intervene in the removal operations to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

The Coast Guard shall:

(a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with Section 10 hereof;

(b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and

(c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

Section 14. *Failure of the Registered Owner to remove the Wreck* - In case the registered owner of the wreck found within the EEZ of the Philippines fails to remove it within the deadline set by the Coast Guard for the removal of the same without justifiable reasons, or the registered owner cannot be contacted, the Coast Guard may remove the

wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

Section 15. *Urgent necessity for the removal of Wrecks* - In circumstances where the removal of the wreck in the EEZ of the Philippines requires immediate action, and the Coast Guard has informed the State of the ship's registry and the registered owner in cases of foreign vessels, and the registered owners for domestic vessels, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

The provisions of this Article may be given suppletory application to measures facilitating removal of wrecks within the internal waters and territorial seas of the Philippines insofar as it is not incompatible with other National Laws and the Rules and Regulations issued by the Coast Guard on the removal of wrecks.

ARTICLE V

LIABILITY OF THE OWNER

Section 16. *Liability of the Owner* - Subject to article IV Sections 11, 12, 13, 14 and 15 hereof, the registered owner shall be liable for the costs of locating, marking and removing the wreck, unless the registered owner proves that the maritime casualty that caused the wreck:

- (a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or
- (c) was wholly caused by the negligence or other wrongful act of any Government or

other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

Section 17. *Right to Limit Liability* - Nothing in this Act shall affect the right of the registered owner to limit liability under any national or international regime which may hereinafter be enacted or be given application in the Philippines, nor shall it prejudice any right of recourse against third parties.

Section 18. *Constitution of a fund.* - For the purpose of availing himself of the benefit of limitation provided for under Section 17 of this Act following the occurrence of a wreck which constitutes a hazard to navigation or a threat to the marine environment whether in the internal waters, territorial seas or EEZ of the Philippines, the registered owner shall be required to constitute a fund for the total sum representing the limit of his liability with the Maritime Industry Authority (MARINA) to cover Incidents under this Act.

The fund can be constituted by depositing the sum or by producing a bank guarantee or other financial guarantee acceptable under existing laws and considered to be adequate by the Department of Transportation and Communications (DOTC).

ARTICLE VI

ROLE OF THE MARITIME INDUSTRY AUTHORITY

Section 19. *Provision for Compulsory Insurance or other Financial Security* - All vessels of 300 gross tonnage and above, to include foreign vessels calling ports of the Philippines, shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Act. Such insurance shall be in the amount as may be determined by MARINA, which shall promulgate the necessary regulations in accordance with Section 16 hereof, to ensure compliance of the provisions under this Article.

To this end, MARINA shall have the sole authority to issue a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Act, after determining that the requirements of paragraph 1 have been complied with. With respect to a ship registered in another Flag State, such ship must carry such certificate issued or certified by the appropriate authority of the State of the ship's registry.

In cases of foreign vessels whose Flag States are not parties to the Convention, said foreign vessels may be issued or certified by MARINA upon proper application.

MARINA shall ensure, that insurance or other security to the extent required by this Section is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port within the internal waters, or arriving at or leaving from an offshore facility in the territorial sea of the Philippines.

Section 20. *Form of Insurance Certificate* - The compulsory insurance certificate shall be in the form as may be required by MARINA, and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
 - (b) gross tonnage of the ship;
 - (c) name and principal place of business of the registered owner;
 - (d) IMO ship identification number;
 - (e) type and duration of security;
 - (f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- and

(g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

Section 21. *Accreditation of Institutions or Organizations* - MARINA may delegate the power to issue certificates to either an institution or an organization duly recognized or accredited by it to issue the certificate referred to in the preceding Section. In all cases, MARINA shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

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

Section 22. *Duty to carry the Certificate on Board* - The certificates issued in compliance with this Act shall be carried on board the vessel, a copy shall be deposited with MARINA, who shall keep the record of the vessel's registry. In cases of those foreign vessels whose Flag State are not parties to the Convention, MARINA shall likewise retain copies of the certificates issued in accordance with Section 17 hereof.

No vessel flying the Philippine flag shall be allowed to operate at any time unless a certificate has been issued under Section 17 hereof.

Section 23. *Effect of termination of insurance other than expiry* - An insurance or other financial security shall not satisfy the requirements of Section 17, if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate before three months have elapsed from the date on which

notice of its termination is given to MARINA, unless such certificate has been surrendered to MARINA or a new certificate has been issued within the said period.

ARTICLE VII

CLAIMS AND ACTIONS

Section 24. *Claims for Costs* - Any claim for costs arising under this Act may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defenses (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke..

Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with Article VI, Section 19. Moreover, the defendant may invoke the defense that the maritime casualty was caused by the willful misconduct of the registered owner, but the defendant shall not invoke any other defense which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

Section 25. *Jurisdiction and Venue* - All claims arising from this Act shall be under the exclusive jurisdiction of the Court exercising jurisdiction over the area where the wreck was found within the internal waters or territorial sea. In cases of wrecks located in the EEZ, such claims arising from this Act may be filed in any Court of the Philippines. Unless otherwise under extreme and justifiable causes, the venue may be transferred to the Courts in the cities of Metro Manila, Cebu and Davao.

Section 26. *Prescriptive periods* - All claims and actions arising from this Act shall be extinguished unless an action is brought hereunder within three (3) years from the date when the hazard has been determined in accordance with this Act. However, in no case shall an action be brought after six (6) years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

ARTICLE VIII

PUBLICATION OF DECISIONS

Section 27. *Publication of Decisions* - All decisions on claims or actions arising from this Act shall be published in the Bulletin Boards of the Court that rendered such decisions.

ARTICLE IX

Penal Provisions

Section 28. *Violation of Duty to report Wrecks* - The violation of the duty to report wrecks imposed upon a ship master or the operator of the ship in Article III, Section 7 hereof, shall be punishable by imprisonment ranging from two (2) years to four (4) years or a fine not exceeding Php 250,000.00, or both at the discretion of the court.

Section 29. *Violation of Duty to remove Wrecks* - The violation of the duty to remove the wrecks imposed upon the owner of the wreck determined to be a hazard to navigation or poses a threat to the marine environment under Article IV, Section 14 hereof, shall be punishable by imprisonment ranging from four (4) years to six (6) years or a fine not exceeding Php 1,000,000.00 or both at the discretion of the court.

Section 30. *Filing of Criminal and/or Administrative Case* - The commission of any violation of the provisions of this Act referred to Sections 27 and 28 by the master, operator or owner of the vessel shall be without prejudice to the filing of any other criminal and/or administrative case based on the Revised Penal Code (RPC), special laws and administrative rules of the Philippines.

ARTICLE X

Final Provisions

Section 31. *Implementing Rules and Regulations* – The DOTC, in coordination with the Coast Guard and the MARINA, shall within six (6) months after the effectivity of this Act, promulgate the implementing rules and regulations for the effective implementation of this Act and immediately cause the publication of the same in a newspaper of general circulation.

Section 32. *Appropriations* - The amount necessary to carry out the purposes of this Act shall be charged against the current year's appropriation of the DOTC. Thereafter, such sums as may be necessary for the purposes, operation, and maintenance of this Act shall be included in the General Appropriations Act.

Section. 33. *Separability Clause* – In the event that any provision of this Act is declared unconstitutional, the validity of the reminder shall not be affected thereby.

Section. 34. *Repealing Clause* – All other laws, decrees, rules and regulations and executive orders contrary to or inconsistent with this Act are hereby repealed, amended, or modified accordingly.

Section. 35. *Effectivity Clause* – This Act shall take effect fifteen (15) days after the completion of its publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved.