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United Nations



**SHIPPING AMENDMENT  
(WRECKREMOVAL) BILL 2011**

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

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## **Dedication**

**Dedicated to my *aiga* [family].**

**To my surviving grandparents Lili'a Tafua and Nigel Burr, my parents and my five younger siblings, you are the sustaining foundation of my past, present and future.**

**Thank you for the grounding, belief, inspiration and above all else, love.**

## **Acknowledgement**

*E muamua lava ona fa'afai le viiga ma le fa'afetai i le tatou Tama oi le lagi* [First of all glory, praise and thanks should be given to our Lord God the Father]. For as it is written, "I can do all things through Christ who strengthens me" (Philippians 4:13) and he has provided this strength and more for the duration of my voyage through IMLI.

**As a scholarship student funded by the NIPPON Foundation it would be remiss of me not to take this opportunity to thank the generosity of the Foundation for the opportunity it has afforded me to study here in Malta. It is also right to convey deepest condolences to the Japanese family for the recent loss of so many and so much. I stand in solidarity with the global community in holding Japan in our thoughts and prayers and trust in the perseverance and resilience of the Japanese people to see them through this heartbreaking tragedy.**

**As a civil servant, my stay in Malta has also been made possible by the acceptance, understanding and support of the Government of Samoa. Thank you to the Prime Minister of Samoa and the Office of the Public Service Commission. To the Attorney General of Samoa it has been rewarding working for the office during your tenure and it is especially comforting to have had the support you consistently provide.**

**Without a doubt, special mention goes to the hardworking staff of IMLI. Their patience, encouragement and support is remarkable. It has been a privilege learning from each and every one of you. This drafting project especially would not be complete without the valuable input and dedication of Ms. Elda Belja (as reviewer) and Dr. Norman Martinez as my supervisor. Thank you.**

**Last but not least, I will always be indebted for the ever present support and encouragement afforded to me by family. Always.**

**The separate contributions of each and all of you have made the completion of this project a milestone of achievement I am truly grateful for.**

*Fa'afetai, fa'afetai tele lava*  
**[Thank you, thank you very much]**

## SHIPPING AMENDMENT (WRECK REMOVAL) BILL 2011

### SAMOA

#### Explanatory Memorandum

##### Introduction

**The Shipping Amendment (Wreck Removal) Bill 2011 (the Bill) has been drafted to implement the provisions of the *Nairobi International Convention on the Removal of Wrecks, 2007*, (the Nairobi Convention). The Nairobi Convention was adopted by a Diplomatic Conference at Nairobi 14-18 May 2007 and will enter into force when 10 States have ratified it. Samoa is not a signatory to the Convention but its purpose and objectives are beneficial if applied within the Samoan maritime zones.**

**The detailed background and historical development of the Nairobi Convention are discussed below.**

##### Background

**The adoption of the Nairobi Convention was a culmination of work by the International Maritime Organization (IMO). The IMO is the United Nations specialized agency with responsibility for safety and security at sea and prevention of marine pollution from ships<sup>1</sup>. Samoa is a Member State of IMO and in accordance with national directives<sup>2</sup> has recognized implementation of the following IMO Conventions:**

1. Convention on the International Maritime Organisation, 1948;
2. Amendments to the Convention on the International Maritime Organisation, 1991
3. Amendments to the Convention on the International Maritime Organisation, 1993<sup>3</sup>;

4. International Convention for the Safety of Life at Sea (SOLAS), 1974;
5. SOLAS Protocol, 1978;
6. SOLAS Protocol 1988;
7. International Convention on Load Lines, 1966;
8. Load Lines Protocol, 1988;
9. International Convention on Tonnage Measurement of Ships, 1969;
10. Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972;
11. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978;

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<sup>1</sup> <http://www.imo.org> (accessed 9 March 2011).

<sup>2</sup> <http://www.mwti.gov.ws> (accessed 9 March 2011).

<sup>3</sup> According to IMO records showing ratification by country Samoa has not ratified the IMO Amendments, 1993.

12. STCW Amendments, 1995<sup>4</sup>;
13. International Convention on Maritime Search and Rescue (SAR), 1979
14. Convention on Facilitation of International Maritime Traffic (FAL), 1965
15. International Convention for the Prevention of Pollution from Ships (MARPOL), 1973 [Annex I/II, III, IV, V];
16. MARPOL Protocol, 1997 [Annex VI];
17. International Convention on Civil Liability for Oil Pollution Damage (CLC) Protocol, 1992;
18. International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990;
19. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996;
20. Convention on Limitation of Liability for Maritime Claims (LLMC), 1976
21. LLMC Protocol, 1996;
22. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), 1988; and
23. International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

**The origin of concern for wreck removal (like other IMO Conventions for compensation and liability) can be traced to the „*Torrey Canyon*“ incident of 1967. The brief facts<sup>5</sup> of this incident are that an oil tanker carrying a cargo of about 115,000 tons of crude oil ran aground the Seven Stones, a submerged reef between the Land’s end and the Scilly Isles in the United Kingdom threatening an environmental disaster. Salvage efforts were unsuccessful and the wreck lay outside, what was at the time, the 3 mile limit of the UK territorial sea. Without clear international endorsement of the right to take action outside its territorial sea, the UK dropped explosive bombs on the wreck to open up her cargo tanks and then set fire to the oil which remained in the hull as a means of pollution prevention. The issue of whether the UK had a unilateral right to take action to protect its coastline remained.**

**The outcome of seeking assistance to this issue and other related problems was the adoption of several International Conventions that followed the incident. Both the International Convention on Civil Liability for Oil Pollution Damage (CLC), and the International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties (Intervention Convention) were adopted in 1969. The Intervention Convention in particular was adopted to “affirm the right of a coastal state to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or other substances or the threat**

**thereof, following upon a maritime casualty”<sup>6</sup>. Then in 1971 the International Convention**

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<sup>4</sup> Same as above, Samoa not listed as having ratified.

<sup>5</sup> Adapted from Shaw, Richard; “The Nairobi Wreck Removal Convention”, (2007) 13 JIML 429, 438.

<sup>6</sup> <http://www.imo.org>.

on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) was adopted. The liability regimes are a significant contribution to international maritime law and as indicated in the preceding paragraphs Samoa is a member of this regime.

Further developments were made in maritime law when the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was adopted. UNCLOS formally recognized the existence of an Exclusive Economic Zone and had some matching provisions to that of the Intervention Convention<sup>7</sup>. It was recognized that although these Conventions made headway in the measures a coastal State could take to protect its marine environment none of these clearly addressed the issue of whether a coastal State could take measures (such as the removal of a wreck outside its territorial sea) for the safety of navigation<sup>8</sup>.

Another incident demonstrating this gap in international law was the wreck of the French vessel *Mont Luis* following a collision with the passenger ferry *Olau Britannia* in 1984. The wreck was a clear hazard to navigation lying on a sandbank near the pilot station but it was outside the limit of Belgian territorial waters (at the time). The Belgian authorities eventually issued a wreck removal order but it was not clear whether they had authority to do so. It has been noted that the “casualty revealed the absence of a legal right of a coastal state to institute outside its territorial limits legal measures to protect access to a major port”<sup>9</sup>.

#### Historical Development<sup>10</sup>

Given the obvious lacuna in international maritime law the IMO Legal Committee was soon pressed for resolutions. Within the auspices of the IMO the topic of wreck removal was raised in 1974/5 when a review was conducted of national laws of member States with a view to introducing a harmonizing instrument. The topic was then taken up by Germany, Greece, Netherlands and UK at the 69<sup>th</sup> session of the IMO Legal Committee in October 1993. At the 70<sup>th</sup> session in the following year Germany, Netherlands and the UK submitted a further paper asserting that an international treaty for wreck removal was necessary in order to establish uniform rules for such operations in international waters.



**The submissions highlighted concerns that wrecks outside territorial waters created:**

- (i) navigational problems for vessels visiting their ports; or
- (ii) represented a pollution or other threat,

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<sup>7</sup> Article 211 entitled Pollution from vessels.

<sup>8</sup> Richard Shaw; *loc cit.*

<sup>9</sup> *Ibid.*

<sup>10</sup> See Griggs, Patrick; “Draft Convention on Wreck Removal”, a paper delivered at the CMI Cape Town Colloquium (Cape Town, South Africa), 12-15 February 2006, CMI Yearbook 2005-2006, p. 376 ([http://www.comitemaritime.org/Uploads/Yearbooks/YBK\\_2005\\_2006.pdf](http://www.comitemaritime.org/Uploads/Yearbooks/YBK_2005_2006.pdf)).

**and States were powerless to deal with such wrecks under international law.**

**The final product of these submissions and negotiations in response to the concerns raised is the Convention.**

**The Nairobi Convention<sup>11</sup>**

**The Nairobi Convention looks to establish a coherent international regime that harmonizes varying State practice and to fill the gap in the existing legal framework. It provides the legal basis for a State to remove, or have removed, shipwrecks or ships within their exclusive economic zone (EEZ) that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. It does this by placing the primary responsibility for removal or elimination of a hazardous wreck on the shipowner. This provides significant financial advantages. For example, a wreck being an object of no commercial value is often left abandoned and neglected. This is based on the idea that wrecks that are of value would have been removed and sold by professional salvors. If Samoa were to remove a valueless wreck (in the interests of the environment of safety of navigation) it would be a worthless exercise because recovery of expenses would be difficult and unlikely. However, the Nairobi Convention provides that where wreck removal is required there will be financial resources available to pay for wreck removal expenses. As a small developing nation with limited resources and a strong emphasis on the protection of the surrounding marine environment the Wreck Removal Convention Bill will be beneficial for Samoa in this regard.**

**A broad scope of the Nairobi Convention can be described in the following 3 principles:**

- 1) the grant of rights to the coastal State to remove a wreck from its exclusive economic zone 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; and
- 3) compulsory insurance and direction action against insurers, up to the LLMC limits and modeled on the equivalent provisions of the CLC.

**So in applying these principles and the substantive provisions of the Convention, Samoa will be responsible for determining whether a hazard exists and marking the (hazardous) wreck. The shipowner on the other hand: has to provide a report on the incident; will be**

**responsible for the costs of location, marking and removal; and will be able to exercise the right to limit liability under the aforementioned Conventions. A more details analysis of application is described in the specific clauses of the Bill.**

### **Current Law**

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<sup>11</sup> Based on Griggs, Patrick; *loc. cit.* and De Boer, Jan; “The Nairobi Perspective: Nairobi International Convention on the Removal of Wrecks, 2007”, a paper delivered at the 39<sup>th</sup> Conference of the CMI (Athens, Greece), 12-17 October 2008, CMI Yearbook 2007-2008, p. 334 ([http://www.comitemaritime.org/Uploads/Yearbooks/YBK\\_2007\\_2008.pdf](http://www.comitemaritime.org/Uploads/Yearbooks/YBK_2007_2008.pdf)).

**Several Acts have been taken into consideration in the drafting of this Bill. These include:**

- *Constitution of the Independent State of Samoa*  
**To ensure that there are no inconsistencies with the supreme law of Samoa**
  
- *Maritime Zones Act 2008:*  
**Relevant for interpretation of the exclusive economic zone.**
  
- *Marine Pollution Prevention Act 2008*  
**Provides for the domestication of other international maritime obligations.**
  
- *Shipping Act 1998:*  
**Provides for the interpretation for terms used in the Amendment Bill such as Samoan waters, Minister, casualty, wrecked vessel, ship, related interests, owner (etc).**  
**Part X – Section 176. Removal of Wrecked Vessels**  
**Part XI – Section 195. The right of limitation of shipowner’s liability**
  
- *Acts Interpretation Act:*  
**Provides for general rules of application**

**Specific clauses of the Bill<sup>12</sup>**

**As a common law country sharing characteristics with other such jurisdictions this Bill has been closely modeled after the United Kingdom draft Bill on Wreck Removal, also incorporating the Nairobi Convention.**

**The following is an analysis of how each clause in the draft Bill incorporates the obligations under the Convention and how they will operate within the Samoan legal system.**

- Clause 1* - **provides for the short title and commencement of the Act. Since Samoa is not a Party to the Convention the commencement date has been left to the discretion of the Minister.**

*Clause 2* - **As an Amendment Bill “Principal Act” is used for ease of reference and clarity.**

*Clause 3* - **The terms of the Convention are incorporated into the Principal Act in consistency with existing terms. Where the Principal Act sufficiently provides for terms used in the Convention these have been maintained. Where these terms are outdated the terms have**

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<sup>12</sup> These notes are not intended to be a comprehensive description of the Bill. Some clauses of are self-explanatory and require no further clarification so none has been given.

been amended or replaced. For example, the definition of “casualty” in section 2 of the Principal Act<sup>13</sup> has been repealed and replaced with a definition that extends to cover also collision.

The terms which have been replaced are repealed in sub-clause (2).

*Clause 4* - Provides for inclusion of the Convention in the list of Conventions that have the force of law in Samoa. Conventions which have the force of law are listed in section 4(2) of the Principal Act.

*Clause 5* - This clause repeals section 176 of the Principal Act by substituting with new sections (176 – 176J). The proposed sections incorporate the various legal obligations under the Convention. Each section is briefly discussed below:

#### Section 176

This provides for the application of the Convention to only wrecks in the Convention area and the powers of the Minister to extend or withdraw application to the territorial sea of Samoa. (Reference to Samoan waters in accordance with the Principal Act). This is to be done by notice in writing to the Secretary-General of the IMO (as defined by the new terms in the interpretation clause).

The section also preserves the right of Government to take measures in relation to wrecks other than the measures in the Convention relating to locating, marking and removing wrecks (Articles 7-9).

Government vessels (as described in the Principal Act) are excluded from the application of the provisions for wreck removal but if Government chooses such vessels may be included through the process set out in the preceding subsections.

#### Section 176A

This section creates an obligation on the master or operator of a vessel to report that a casualty has occurred and that the vessel has become a wreck as a

**consequence. If the wreck is within the Convention area of Samoa to the Chief Executive Officer or if in another State, to the Government of that State.**

**A list of information that should be provided in the report is provided in subsection (2).**

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<sup>13</sup> "Casualty" in relation to a vessel, means -

- (a) Loss, or presumed loss, stranding, grounding foundering or abandonment of, or damage to, the vessel or a boat belonging to the vessel; or
- (b) Damage caused by a vessel or by a boat belonging to the vessel; or
- (c) Loss of life or serious injury caused by -
  - (i) a fire on board; or
  - (ii) an accident to the vessel; or
  - (iii) an accident occurring on board the vessel or a boat belonging to the vessel.

If the obligations and requirements are not met without reasonable cause this is an offence. The penalty upon conviction is 200 penalty units. This is in line with similar provisions in relation to reporting of casualties and incidents (section 80 of the Principal Act).

#### **Section 176B**

This section provides a list of what should be taken into account when determining whether a wreck should be a hazard. The definition of hazard has been incorporated into the interpretation section of the Principal Act through clause 3.

#### **Section 176C**

This section provides for obligations of the Chief Executive Officer to warn mariners and other Affected States, and if the wreck has been determined as a hazard to locate the wreck and mark it. This is in line with the obligations under Articles 7 and 8 of the Convention.

\*Sections 176A to 176C are largely administrative in nature but are relevant for provisions relating to finance since a claim for refund of expenses have to be accompanied by evidence of compliance with these sections.

#### **176D**

Imposes certain obligations on the Chief Executive Officer to inform and consult the ship's registry and other States affected as well as issuing a wreck removal notice requiring the registered owner to remove the wreck and provide evidence of insurance. The notice must amongst other things, specify a deadline. If the notice is not complied with by the deadline the registered owner commits an offence. Provides for the powers of the Chief Executive Officer to impose conditions for wreck removal or intervention in the removal of a wreck. Where a condition is imposed and is not complied with this is



**also an offence and liable upon conviction to a fine.  
Provides for the powers of the Minister to arrange for the removal of a wreck within the Convention area in certain circumstances (listed in subsection 8).  
The penalty units in subparagraphs (3) and (6) have been left blank for appropriate determination by the Minister of Works, Transport and Infrastructure or Cabinet.**

**176E**

**Provides for the liability of the registered owner for the costs of locating, marking and removing the wreck unless certain**

exceptions are met or the liability is in conflict with the Conventions listed in subsection 3.

The section does not affect the rights to limit liability under section 195 of the Act, or any claims for salvage pursuant to the Salvage Convention.

Subsection 6 further provides that claims may be brought directly against the insurer (newly defined in the interpretation section of the Principal Act pursuant to clause 3).

#### **176F**

This section covers compulsory insurance and certification requirements. Any vessel of 300 gross tonnage and above may not enter or leave a Samoan port unless it has insurance or other security compatible with Article 12 of the Convention and carries a wreck removal insurance certificate confirming that such security is in place.

#### **176G**

This section provides that if a vessel enters or leaves (or attempts to enter or leave) a Samoan port without the required certificate attesting that insurance is in place, the master and operator will have each committed an offence and will be liable upon conviction to a penalty fine. The penalty units have been left blank for appropriate determination by the Minister of Works, Transport and Infrastructure or Cabinet.

#### **176H**

This section requires the master or operator of a vessel to ensure that the wreck removal insurance certificate is carried on board and to produce it when requested. Failure to comply with such a requirement is an offence. The penalty unit prescribed as a fine upon conviction has been left blank for appropriate determination by the Minister of Works, Transport and Infrastructure or Cabinet.

#### **176I**

**This section provides the Chief Executive Officer with the powers to issue a wreck removal insurance certificate for a Samoan vessel or foreign vessel (not a party to the Convention) upon application by the registered owner. The Chief Executive Officer must be satisfied of the conditions in subsection 2.**

**The particulars of the certificate are listed in subsection 3 with the form to be used set out in Schedule III. Schedule III is incorporated through clause 6.**

**The Head of State, acting on the advice of Cabinet may make regulations about electronic certificates or cancellation of**

**certificates. This is in line with the general regulation makingpower provided under section 217 of the Act. This section also provides that certificates are to be available for inspection once provided to the Registrar by the Chief Executive Officer.**

**176J**

**This section provides for the limitation period within which an action can be taken to recover costs for measures taken under 176C and 176D.**

***Clause 6* - This clause provides for the inclusion of Schedule III after Schedule II of the Principal Act.**

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**SHIPPING AMENDMENT (WRECK REMOVAL) BILL 2011**

**SAMOA**

**Arrangement of Provisions**

**PART I  
Preliminary**

1. Short title and commencement
2. Principal Act
3. Interpretation
4. Application

**PART II  
Wreck Removal**

5. Insertion of new provisions
6. Schedule

**2011 No.**

**AN ACT to amend the Shipping Act 1998 and give effect to the Nairobi International Convention on the Removal of Wrecks, concluded in Nairobi on 18<sup>th</sup> day of May 2007, and for related purposes.**

**BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-**

**PART I**

**Preliminary**

**1. Short title and commencement-** (1) This Act may be cited as the Shipping Amendment (Wreck Removal) Act 2011.

**(2) This Act commences on a date to be nominated by the Minister.**

**2. Principal Act** – In this Act, unless the context otherwise requires “Principal Act” means the Shipping Act 1998.

**3. Interpretation** – (1) Section 2 of the Principal Act is amended by insertion of the following in alphabetical order:

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

**“Convention area”**

- (a) for Samoa, means the exclusive economic zone of Samoa pursuant to section 19 of the Maritime Zones Act 1999;
- (b) for any other State, their exclusive economic zone established in accordance with international law or if the State 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;

**“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;

**“casualty” in relation to a vessel means**

- (a) Loss, or presumed loss;
- (b) collision, stranding, grounding, foundering or other incident of navigation;
- (c) abandonment;
- (d) damage to or imminent threat of material damage to the vessel or its cargo; or
- (e) Loss of life or serious injury caused by -
  - (i) a fire on board; or

- (ii) an accident to the vessel; or
- (iii) an accident occurring on board the vessel or a boat belonging to the vessel;

**“insurer” means the person providing wreck removal insurance;**

**“operator of the vessel” means the owner of the vessel or any other organization or person such as the manager, or the bareboat charterer, who as assumed the responsibility for operation of the vessel from the owner of the vessel and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended;**

**“registered owner”** in relation to a wreck means

- (a) any person or persons registered as the owner of the vessel; or
- (b) in the absence of registration, the person or persons owning the vessel at the time of the casualty; or
- (c) in the case of a vessel owned by a State and operated by a company which in that State is registered as the operator of the vessel, such company;

**“related interests” means the interests of a coastal State directly affected or threatened by a wreck, including:**

- (a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- (b) tourist attractions and other economic interests of the area concerned;
- (c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and
- (d) offshore and underwater infrastructure;

**“removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck;**

**“Secretary General”** means the Secretary General of the IMO;

**“State of the ship’s registry”** means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly;

**“wreck”** includes, following a casualty:

- (a) a sunken or stranded vessel;
- (b) any part of a sunken or stranded vessel, including any object that is or has been on board such a vessel;
- (c) any object that is lost at sea from a vessel 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; and

**“wreck removal insurance”** means a contract of insurance or other security satisfying the requirements of article 12 of the Nairobi Convention.”

**(2) The following terms of interpretation in section 2 of the Principal Act are repealed – “casualty”, “owner in relation to a wrecked vessel”, “related interests” and “wrecked vessel”.**

**4. Application** – Section 3(2) of the Principal Act is amended by inserting the following after paragraph (j):

**“(k) Nairobi International Convention on the Removal of Wrecks, 2007 (known as the “Nairobi Convention).”**

**5. Insertion of new provisions** - For section 176 of the Principal Act substitute:

**“176. Application of the Nairobi Convention – (1)** Subject to the provisions of this Act the Nairobi Convention shall apply to wrecks in the Convention area.

**(2)** The Minister may, upon the advice of the Chief Executive Officer:

- (a) extend the application of the Nairobi Convention to Samoan waters (notice of extension);



- (b) withdraw application of the Nairobi Convention to Samoan waters (notice of withdrawal); or
- (c) extend the application of the Nairobi Convention to Government vessels,

**by notice in writing to the Secretary-General of the IMO**

**(3)** If a notice of extension is made:

(a) the Nairobi Convention shall apply without prejudice to the rights of Government to take measures in relation to wrecks located in Samoan waters, other than locating, marking and removing them in accordance with the Nairobi Convention; and

(b) section 176E, and 176F of this Act shall not apply to any measures taken in relation to wrecks located in Samoan waters other than locating, marking and removing them in accordance with the Nairobi Convention.

**(4)** The Wrecks Convention shall not apply to:

(a) measures taken under the Marine Pollution Prevention Act 2008 in relation to the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended; or

(b) Government vessels, unless a notice has been issued in accordance with this section.

**176A. Reporting wrecks - (1) Where a Samoan vessel is involved in a casualty resulting in a wreck, the master or operator of the vessel shall, as soon as practicable report the event to:**

- (a) the Chief Executive Officer, if the wreck is in the Convention area of Samoa; or
  - (b) the government of the Affected State.
- (2)** A report under subsection (1) must include:
- (a) the name and the principal place of business of the registered owner;
  - (b) the precise location of the wreck;
  - (c) the type, size and construction of the wreck;
  - (d) the nature of the damage to, and the condition of, the wreck;
  - (e) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and

(f) the amount and types of oil, including bunker oil and lubricating oil, on board.

(3) The master or operator of a vessel who, without reasonable cause, fails to comply with reporting requirements commits an offence and shall be liable upon conviction to a fine not exceeding 200 penalty units.

**176B. Determination of a Hazard – The Chief Executive Officer may determine that a wreck in the Convention area is or is likely to become a hazard to navigation by taking into account:**

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

- (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (o) any other circumstances that might necessitate the removal of the wreck.

**176C. Locating and marking of wrecks – (1)** If a wreck is in the Convention area the Chief Executive Officer must direct an officer or officers of the administration to:

- (a) warn mariners and the Affected State of the nature and location of the wreck; and
  - (b) if the wreck poses a hazard:
    - (i) establish the precise location of the wreck;
    - (ii) mark where the wreck is located in accordance with the internationally accepted system of buoyage used; and
    - (iii) circulate the particulars of the marking of the wreck to mariners and other States concerned.
- (2) A direction must be in writing or confirmed in writing as soon as practicable.

**176D. Removal of wrecks - (1)** If a wreck in the Convention area constitutes a hazard in accordance with section 176B the Chief Executive Officer must as soon as practicable:

- (a) inform the State of the ship's registry and the registered owner; and
  - (b) 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.
  - (c) issue to the registered owner, a wreck removal notice (removal notice) requiring the registered owner to:
    - (i) remove the wreck; and
    - (ii) provide evidence of insurance or other financial security as required by section 176F.
- (2) The notice must:
- (a) specify the deadline within which the registered owner must remove the wreck, taking into

**account the nature of the hazard determined in accordance with section 176B;**

- (b) inform the registered owner that if the wreck is not removed within the specified deadline, the wreck may be removed at the registered owner's expense; and
- (c) inform the registered owner that the administration intends to intervene immediately in circumstances where the hazard becomes particularly severe.

(3) A registered owner who, without reasonable cause, fails to comply with a notice by the specified deadline commits an offence and shall be liable upon conviction to a fine not exceeding [ ] penalty units.

(4) Where a registered owner contracts with a salvor or other person to remove the wreck, the Chief Executive Officer may impose conditions to the extent necessary to ensure that wreck removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

(5) A condition under subsection (4) is imposed by giving notice of it to the registered owner.

(6) A registered owner who, without reasonable cause, fails to comply with a condition commits an offence and shall be liable upon conviction to a fine not exceeding [ ] penalty units.

(7) The Chief Executive Officer may intervene in removal of a wrecked vessel by the registered owner 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.

(8) The Minister upon advice of the Chief Executive Officer may order, direct, or arrange for the removal of a wreck within the Convention area, by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment if:

- (a) the registered owner does not remove the wreck within the specified deadline;
- (b) the registered owner cannot be contacted; or

- (c) immediate action is required and the State of the ship's registry and the registered owner have been informed by the administration.

**176E. Liability of the registered owner - (1)**  
**Subject to subsection 3, the registered owner of a wreck shall be liable for the costs of locating, marking and removing the wreck under sections 176C and 176D, unless the registered owner proves that the 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;
- (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

(2) Nothing in this section shall affect the right of the registered owner to limit liability under section 195.

(3) The registered owner is not liable for costs under subsection 1 if or to the extent that, liability for such costs would be in conflict with the Marine Pollution Prevention Act 2008 in relation to:

- (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; or
- (c) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended.

(4) Where the registered owner of each of two or more vessels is liable for costs under this section but the costs for which each is liable cannot reasonably be separated, the registered owners shall be jointly liable for the total costs.

(5) If measures under this section constitute salvage sections 178, 179 and 182 prevail.

(6) Any claim for costs arising under this part may be brought directly against the insurer or other person providing financial security for the registered owner's liability.

**176F. Wreck removal insurance – (1)** This section applies to vessels with a gross tonnage of 300 or more.

(2) A Samoan vessel may not enter or leave a port in Samoa unless

- (a) the vessel has wreck removal insurance; and
- (b) the Chief Executive Officer has certified that it has wreck removal insurance.

(3) A foreign vessel may not enter or leave a port in Samoa unless:

- (a) the vessel has wreck removal insurance; and
- (b) there is a certificate confirming that it has wreck removal insurance.

(4) For a foreign vessel of a State Party to the Nairobi Convention the certificate must be one that has been issued by or under the authority of the government of that State.

(5) For a foreign vessel of any other State the certificate must be one that has been issued:

- (a) by the Chief Executive Officer; or
- (b) by or under the authority of the government of a State Party to the Nairobi Convention.

**176G. Failure to insure – (1)** A master and operator of a vessel each commits an offence if:

- (a) the vessel enters or leaves a port in contravention of section 176F; or
- (b) attempts to navigate the vessel into or out of a port in contravention of section 176F,

**and shall be liable upon conviction to a fine not exceeding [ ] penalty units.**

**(2) A vessel may be detained if anyone attempts to navigate it out of a port in contravention of section 176F.**

**176H. Production of certificate – (1)** The master or operator of a vessel subject to section 176F must ensure that the

**wreck removal insurance certificate is carried on board and produced upon the request of an officer.**

(2) The master or operator of a vessel who, without reasonable cause, fails to comply with subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding [ ] penalty units

**176I. Insurance certificate – (1) This section applies where the registered owner applies to the Chief Executive Officer for a wreck removal insurance certificate in respect of:**

- (a) a Samoan vessel;
- (b) a foreign vessel of a State other than a Nairobi Convention State.

(2) The Chief Executive Officer may issue an insurance certificate if satisfied that –

- (a) the vessel has wreck removal insurance in place for the period to which the certificate will relate; and
- (b) the obligations of the person providing the wreck removal insurance will be met.

(3) The insurance certificate may be in the form set out in Schedule III and shall contain the following particulars:

- (a) name of the vessel, distinctive number or letters and port of registry;
- (b) gross tonnage of the vessel;
- (c) name and principal place of business of the registered owner;
- (d) IMO vessel 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;
- (h) any other conditions of determined by the Chief Executive Officer upon consideration of any guidelines adopted by IMO on the financial responsibility of registered owners.

(4) The Head of State, acting on the advice of Cabinet may make regulations about the maintenance of electronic certificates or the cancellation of a certificate.

(5) The Chief Executive Officer must send a copy of a certificate issued in respect of a Samoan vessel to the Registrar.

(6) The Registrar must make such certificates available for public inspection.

**176J. Limitation period** – An action to recover costs under section 176E may not be brought after:

(a) three years from the date when a wreck removal notice was given in respect of the wrecked vessel;

(b) six years from the date of the casualty that resulted in the wreck or the date of the first occurrence if the casualty consisted of a series of occurrences.”

**6. Schedule** – The Principal Act is amended by insertion of the following after Schedule II:

**“SCHEDULE III**

*(section 176I)*

**Certificate of insurance or other financial security in respect of liability for the removal of wrecks**

Name of vessel	Gross Tonnage	Distinctive number or letters	IMO vessel 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 vessel, a policy of insurance or other financial security satisfying the requirements of article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.**

**Type of security**

.....

**Duration of security**

.....

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



**Name**

.....

**Address**

.....

.....

..... **This certificate is valid until**

.....

**Date Signed**

**Issued or certified by the Government of the Independent State of  
Samoa”**