



Removal of Wrecks Directive 2015

Directive 01-2015

The Director of the Department of Marine Services and Merchant Shipping (ADOMS), in exercise of the powers conferred by Section 7, sub-section (3) of the Merchant Shipping Act 2006 (as amended), and of all other powers enabling him in that behalf, makes the following Directive.

1. Citation and commencement.

1. This Directive may be cited as the Removal of Wrecks Directive 2015 and shall come into force on the 20th February, 2015.
2. The Nairobi International Convention on the Removal of Wrecks, 2007, which was adopted on the 18th May, 2007 will enter into force on the 14th April, 2015.

2. Interpretation.

In this directive:

1. "Affected State" means the State in whose Convention Area the wreck is located.
2. "Article" means an Article of The Nairobi International Convention on the Removal of Wrecks, 2007.
3. "Convention" means The Nairobi International Convention on the Removal of Wrecks, 2007.
4. "Convention Area" means the Exclusive Economic Zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured. In the case of Antigua and Barbuda the Convention Area includes the territory and territorial sea of Antigua and Barbuda.
5. "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.
6. "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.
7. "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.

8. "Organization" means the International Maritime Organization.
9. "Receiver of Wreck" means the person ascribed as the Receiver of Wreck for Antigua and Barbuda under the Merchant Shipping Act 2006 (as amended).
10. "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. 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.
11. "Related interests" means the interests of a coastal State directly affected or threatened by a wreck, such as:
 - (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.
12. "Removal" means any form of prevention, mitigation or elimination of the hazard created by a wreck. "Remove", "removed" and "removing" shall be construed accordingly.
13. "Secretary-General" means the Secretary-General of the Organization.
14. "Ship" means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.
15. "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.
16. "Wreck", following upon a maritime casualty, means:
 - (a) A sunken or stranded ship; or
 - (b) Any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

- (c) Any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- (d) A ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

3. Objectives.

1. Antigua and Barbuda may take measures in accordance with the Convention in relation to the removal of a wreck which poses a hazard in the Convention Area of Antigua and Barbuda.
2. Measures taken by Antigua and Barbuda in accordance with paragraph 1 shall be proportionate to the hazard.
3. Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship's registry, and of any person, physical or corporate, concerned.
4. Antigua and Barbuda shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than Antigua and Barbuda.

4. Application.

1. Except as otherwise provided in the Convention, the Convention shall apply to wrecks in the Convention Area.
2. Antigua and Barbuda has extended the application of the Convention to wrecks located within its territory, including the territorial sea, without prejudice to the rights and obligations of Antigua and Barbuda to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with the Convention. The provisions of Articles 10, 11 and 12 of the Convention shall not apply to any measures so taken other than those referred to in Articles 7, 8 and 9 of the Convention. The Secretary General has been notified of this extension.

5. Exclusions.

1. The Convention shall not apply to measures taken under 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.

2. The Convention shall not apply to any warship 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.
3. The following provisions of the Convention shall not apply in the territory, including the territorial sea of Antigua and Barbuda: (i) Article 2, paragraph 4; (ii) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and (iii) Article 15.
4. In respect of the territory, including the territorial sea of Antigua and Barbuda, subject to the national law of Antigua and Barbuda, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Receiver of Wrecks may lay down conditions for such removal only 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.

6. Reporting of Wrecks.

1. The master and the operator of a ship flying the flag of Antigua and Barbuda are required to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation has been fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.
2. Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with Article 6 of the Convention, including:
 - (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.

7. Determination of Hazard.

When determining whether a wreck poses a hazard, the following criteria should be taken into account by Antigua and Barbuda:

- (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.

8. Locating Wrecks.

1. Upon becoming aware of a wreck, Antigua and Barbuda shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.
2. If Antigua and Barbuda has reason to believe that a wreck poses a hazard, all practicable steps shall be taken to establish the precise location of the wreck.

9. Marking of Wrecks.

1. If Antigua and Barbuda determines that a wreck constitutes a hazard, all reasonable steps shall be taken to mark the wreck.

2. In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.
3. Antigua and Barbuda shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

10. Measures to facilitate the removal of wrecks.

1. If Antigua and Barbuda determines that a wreck constitutes a hazard, then the following steps shall be taken immediately:
 - (a) Inform the State of the ship's registry and the registered owner; and
 - (b) Proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.
2. The registered owner shall remove a wreck determined to constitute a hazard.
3. When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the Receiver of Wreck with evidence of insurance or other financial security as required by Article 12 of the Convention.
4. The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, Antigua and Barbuda may lay down conditions for 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.
5. When the removal referred to in paragraphs 2 and 4 has commenced, the Receiver of Wreck may intervene in the removal only 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.
6. The Receiver of Wreck 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 Article 6 of the Convention;
 - (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.

7. If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a) above, or the registered owner cannot be contacted, Antigua and Barbuda reserves the right to remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.
8. In circumstances where immediate action is required and Antigua and Barbuda has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.
9. Antigua and Barbuda hereby gives consent to an Affected State to act in accordance with Article 9 of the Convention, where required.
10. When relevant the information referred to in this paragraph shall be provided by Antigua and Barbuda to the registered owner identified in the reports referred to in Article 5, paragraph 2 of the Convention.

11. Liability of the owner.

1. Subject to Article 11 of the Convention, the registered owner shall be liable for the costs of locating, marking and removing the wreck under Articles 7, 8 and 9 respectively of the Convention, 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.
2. The registered owner retains the right to limit liability under the Merchant Shipping Act 2006 (as amended) or applicable international regimes, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.
3. No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of the Convention. This is without prejudice to the rights and obligations of Antigua and Barbuda which has made a notification under Article 3, paragraph 2 of the Convention, in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing in accordance with the Convention.
4. All rights of recourse against third parties are retained by Antigua and Barbuda.

12. Exceptions to liability.

1. The registered owner shall not be liable under the Convention for the costs mentioned in Article 10, paragraph 1 of the Convention if, and to the extent that, liability for such costs would be in conflict with:
 - (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; provided that the relevant convention is applicable and in force.
2. To the extent that measures under the Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of the Convention.

13. Compulsory insurance or other financial security.

1. The registered owner of a ship of 300 GT and above and flying the flag of Antigua and Barbuda shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under the 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.
2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of the Convention shall be issued to each ship of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party other than Antigua and Barbuda, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. In the case of Antigua and Barbuda this compulsory insurance certificate shall be in the format of the model set out in the annex to this directive, 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.
3. In the case of Antigua and Barbuda registered ships the certificate shall be in English. In the case of other States if the language used is not English, French or Spanish, the text shall at least include a translation into one of these languages.
4. The certificate shall be carried on board the ship.
5. An insurance or other financial security shall not satisfy these requirements if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 before three months have elapsed from the date on which notice of its termination is given. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying these requirements.
6. Nothing in the Convention shall be construed as preventing Antigua and Barbuda from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of the Convention. In such cases, Antigua and Barbuda is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.
7. Certificates issued and certified under the authority of another State Party shall be accepted by Antigua and Barbuda for the purposes of the Convention and shall be regarded by Antigua and Barbuda as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in that State Party. Antigua and Barbuda may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by the Convention.
8. Any claim for costs arising under the Convention 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 defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. 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 paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the willful misconduct of the registered owner, but the defendant shall not invoke any other defence 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.

9. Antigua and Barbuda requires that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of 300 GT and above, wherever registered, entering or leaving a port in Antigua and Barbuda, or arriving at or leaving from an offshore facility in the territorial sea of Antigua and Barbuda.

14. Time limits.

Rights to recover costs under the Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with the Convention. However, in no case shall an action be brought after six 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.

15. Settlement of disputes.

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

Signed by the authority of the Director of the Department of Marine Services and Merchant Shipping.

Ambassador Dwight C. R Gardiner
Director / Registrar General

ANNEX



**The Government of
ANTIGUA AND BARBUDA W.I.**

DEPARTMENT OF MARINE SERVICES AND MERCHANT SHIPPING (ADOMS)

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE REMOVAL OF WRECKS

Issued in accordance with the provisions of Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007

Name of Ship:

Gross Tonnage:

Distinctive Number or letters:

Official No.:

Call Sign:

IMO Ship Identification Number:

Port of Registry:

Name and full address of the principal place
of business of the registered owner:

SPECIMEN

THIS IS TO CERTIFY that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007.

Type of Security:

Certificate No:

Duration of Security:

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

This certificate issued under the authority of the Antigua and Barbuda Government

It will remain in force until

Issued on

at

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