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**MERCHANT SHIPPING (WRECK REMOVAL
CONVENTION) REGULATIONS, 2015**

Arrangement of Regulations

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S.I. No. 10 of 2015

**MERCHANT SHIPPING ACT
(CHAPTER 268)**

**MERCHANT SHIPPING (WRECK REMOVAL
CONVENTION) REGULATIONS, 2015**

The Minister, in exercise of the powers conferred by sections 255 and 289 of the Merchant Shipping Act, Ch. 268, makes the following regulations —

PART I - PRELIMINARY

1. Citation.

These regulations may be cited as the Merchant Shipping (Wreck Removal Convention) Regulations, 2015.

2. Interpretation.

(1) In these regulations —

“**accident**” means a collision of ships, a stranding, another incident of navigation or another event, whether on board a ship or not, which results in material damage to a ship or its cargo, or in an imminent threat of material damage to a ship or its cargo;

“**Act**” means the Merchant Shipping Act (*Ch. 268*);

“**authorised officer**” means a nautical inspector, port officer, receiver of wrecks or any other officer authorised by the Minister;

“**Bahamas’ Convention area**” means the territorial sea and exclusive economic zone of The Bahamas;

“**competent authority**” means —

(a) with respect to reporting, locating and marking, and removing wrecks, the Port Controller or a representative designated by the Port Controller; and

(b) with respect to compulsory insurance and certificates, the Director or a representative designated by the Director;

“**Director**” means the Director of The Bahamas Maritime Authority;

“**exclusive economic zone**” has the same meaning ascribed under section 8 of the Archipelagic Waters and Maritime Jurisdiction Act (*Ch. 282*);

“**hazard**” means any condition or threat that imposes a danger to navigation or may result in harmful consequences to the marine environment or damage to the coastline or related interests;

“**IMO**” means the International Maritime Organization adopted by the United Nations in Geneva on 17 March 1948;

“**insurer**” means —

- (a) a company which carries on insurance business; or
- (b) a provider who supplies financial security, in accordance with the Wrecks Convention;

“**Minister**” means the Minister responsible for Maritime Affairs;

“**operator**” means a person, manager, organization, or the bareboat charterer who has assumed responsibility for the operation of the ship from the owner;

“**owner**” means —

- (a) a person registered as the owner of the ship;
- (b) a person who owns the ship at the time of the accident, in the absence of registration;
- (c) a company, where a ship is owned by a State and operated by a company which in that State is registered as the operator of the ship;

“**Port Controller**” means the officer referred to under section 3 of the Port Authorities Act (*Ch. 269*);

“**State of the ship's registry**” means —

- (a) with regards to a registered ship, the State of registration of the ship; and
- (b) with regards to an unregistered ship, the State whose flag the ship is entitled to fly;

“**territorial sea**” has the same meaning ascribed under section 4 of the Archipelagic Waters and Maritime Jurisdiction Act (*Ch. 282*);

“**Wrecks Convention**” means the Nairobi International Convention on the Removal of Wrecks 2007 signed in Nairobi on 18 May 2007;

“**Wrecks Convention State**” means a State which is a party to the Wrecks Convention;

“wreck removal insurance” means a contract of insurance or other financial security satisfying the requirements of Article 12 of the Wrecks Convention;

“wreck removal insurance certificate” means a certificate attesting the insurance or other financial security of a ship to cover liability under the Wrecks Convention.

- (2) Unless otherwise defined in the Act or these regulations, or unless the context so requires, words and expressions used in these regulations shall have the same meaning ascribed to them in the Wrecks Convention.

3. Application.

- (1) Pursuant to section 255 of the Act and subject to the provisions of these regulations, the Wrecks Convention shall form part of the Laws of The Bahamas.
- (2) These regulations shall apply to —
- (a) Bahamian ships engaged in commercial activities, except —
 - (i) warships or naval ships, or
 - (ii) any other ship as determined by the Director;
 - (b) foreign ships in The Bahamas’ Convention area, except naval or military ships.

PART II - REPORTING, LOCATING AND MARKING, AND REMOVING WRECKS

4. Wreck reports.

- (1) Where an accident results in a wreck in The Bahamas’ Convention area, the master or the operator of a ship involved in the accident shall immediately report the wreck to the competent authority.
- (2) A report referred to under paragraph (1) shall state the name and the principal place of business of the owner and relevant information necessary to determine whether the wreck poses a hazard, 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) depth of the water in the area;
 - (e) tidal range and currents in the area;

- (f) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the IMO, 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;
- (g) proximity of shipping routes or established traffic lanes;
- (h) traffic density and frequency;
- (i) type of traffic;
- (j) 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;
- (k) vulnerability of port facilities;
- (l) prevailing meteorological and hydrographical conditions;
- (m) submarine topography of the area;
- (n) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (o) acoustic and magnetic profiles of the wreck;
- (p) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (q) any other circumstances that might necessitate the removal of the wreck.

5. Locating and marking wrecks.

- (1) Where the competent authority receives a report concerning an accident which resulted in a wreck in The Bahamas' Convention area, the competent authority shall immediately inform mariners and nearby States of the nature and location of the wreck.
- (2) Where the competent authority determines that the wreck constitutes a hazard, the competent authority shall take all practicable steps to mark the wreck and publish such markings.

6. Removal by owner.

- (1) Where a ship has been involved in an accident which results in a wreck in The Bahamas' Convention area, and the competent authority has determined that the wreck constitutes a hazard, the competent authority shall take all reasonable steps to give a wreck removal notice to the owner

to remove the wreck and produce evidence of insurance or other financial security.

- (2) The wreck removal notice referred to under paragraph (1) shall be in writing and shall specify —
 - (a) a reasonable deadline by which the owner shall remove the wreck;
 - (b) that, if the owner does not remove the wreck by that deadline, the competent authority may remove the wreck at the registered owner's expense; and
 - (c) that the competent authority intends to intervene immediately in the event that the hazard becomes severe.

7. Conditions regarding removal.

Where the competent authority has issued a wreck removal notice to an owner, the competent authority may impose conditions for the removal of wrecks to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

8. Removal in default.

The competent authority may remove the wreck, where —

- (a) an owner does not remove the wreck by the deadline specified under regulation 6 or the owner cannot be contacted;
- (b) immediate action is required, and the State of the ship's registry and the owner have been informed.

PART III - LIABILITY

9. Liability for costs.

- (1) An owner shall be liable for the costs of locating, marking and removing the wreck, unless the owner can prove that the accident that caused the wreck —
 - (a) resulted from an act of war excluding terrorism;
 - (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.

- (2) The owner is not liable for costs under this regulation if or to the extent that liability would conflict with —
 - (a) the International Convention on Civil Liability for Oil Pollution Damage, 1992;
 - (b) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, together with amendments thereto in force on 28th February, 2015;
 - (c) the Merchant Shipping (Maritime Claims Limitation of Liability) Act (*Ch. 281*) and any regulations made thereunder.
- (3) Where the owner of each of two or more ships is liable for costs under this regulation, but the costs for which each is liable cannot reasonably be separated, the owners shall be jointly liable for the total costs.
- (4) This regulation does not prevent the exercise of the right, if any, to limit liability.

10. Limitation period.

An action to recover costs under regulation 9 may not be brought after the end of whichever of the following ends earlier —

- (a) the period of 3 years from the date on which a wreck removal notice was given in respect of the wreck; or
- (b) the period of 6 years from the date of the accident which resulted in the wreck.

11. Suspended ship's registry under bareboat charter.

Notwithstanding regulation 2 of these regulations and Article 1 of the Wrecks Convention, where the registry of a Bahamian ship is suspended and that ship is registered in a foreign country for the duration of a bareboat charter in accordance with section 25 of the Merchant Shipping Act, the "State of the ship's registry" is such foreign country.

PART IV - COMPULSORY INSURANCE

12. Insurance.

- (1) This Part applies to any ship of 300 gross tonnage or over.
- (2) A ship shall not enter or leave a port in The Bahamas, and neither shall any Bahamian ship enter any port of any State unless such ship is in possession of an insurance cover or other financial security evidenced by the certificate referred to under regulation 13.

13. Wreck removal insurance certificate.

- (1) The competent authority may, upon application, and —
 - (a) on being satisfied that a ship has wreck removal insurance or other financial security which satisfies the requirements under these regulations and Article 12 of the Wrecks Convention;
 - (b) upon payment of the fee specified under regulation 17,
issue to the owner a wreck removal insurance certificate (“the certificate”).
- (2) For the purposes of these regulations, the certificate shall be —
 - (a) for a Bahamian ship, a certificate issued by the competent authority;
 - (b) for a foreign ship registered in a Wrecks Convention State, a certificate that has been issued by or under the authority of the government of that State;
 - (c) for a foreign ship registered in any other State, a certificate that has been issued by the competent authority or under the authority of the government of a Wrecks Convention State.
- (3) The certificate shall contain —
 - (a) the name of the ship, distinctive number or letters and port of registry;
 - (b) the gross tonnage of the ship;
 - (c) the name and principal place of business of the owner;
 - (d) the IMO ship identification number;
 - (e) the type and duration of financial security;
 - (f) the name and principal place of business of insurer or other person giving financial security and, where appropriate, place of business where the insurance or other financial security is established; and
 - (g) the period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.
- (4) Where the competent authority refuses an application referred to under paragraph (1), the competent authority shall within fourteen days from the date of such refusal give written notice to the owner stating the reasons for such refusal.
- (5) A master or operator shall —
 - (a) ensure that the certificate is carried on board the ship; and

- (b) on request, produce the certificate to the competent authority, and where the ship is a Bahamian ship, also to any registrar, inspector or consular officer.
- (6) A person who fails to comply with the provisions under paragraph (5), commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

14. Cancellation and delivery up of certificate.

- (1) Where the owner, to whom a certificate has been issued under regulation 13, ceases to be the owner of the ship to which the certificate relates, the certificate shall cease to be valid and the owner shall immediately deliver up the certificate to the competent authority for cancellation.
- (2) Where, at any time while a certificate issued under regulation 13 is in force —
 - (a) it is established in any legal proceedings that the contract of insurance or other financial security in respect of which the certificate was issued, is or may be treated as invalid;
 - (b) circumstances arise in relation to the insurer or guarantor named in the certificate, or where more than one is so named, to any of them, such that, if the certificate was applied for at that time, the competent authority would be entitled to refuse the application under regulation 13,

the certificate may be cancelled by the competent authority and, if so cancelled, shall, on request, immediately be delivered up to the competent authority by the owner to whom a certificate has been issued.

15. Third parties' rights against insurers.

- (1) Where —
 - (a) a ship has been involved in an accident as a result of which it or anything from it has become a wreck in The Bahamas' Convention area;
 - (b) at the time of the accident the ship had wreck removal insurance; and
 - (c) there is a wreck removal insurance certificate in relation to the insurance,

a third party who is entitled to recover costs from the ship's owner under regulation 9, may recover such costs from the insurer.

- (2) Where a third party to a wreck wishes to recover costs from the insurer under paragraph (1), it is a defence for the insurer to prove that the accident was caused by the wilful misconduct of the ship's owner.
- (3) An insurer may —
 - (a) rely on the same defences that the owner would have been entitled to if the claim had been made against the owner;
 - (b) limit liability in respect of claims made under this regulation to the same extent as the owner may limit liability.

PART V - MISCELLANEOUS

16. Detention of ship.

- (1) A ship may be detained by an authorised officer, where a master or operator of a ship attempts to navigate that ship into or out of a port in The Bahamas without wreck removal insurance or other financial security, or a certificate confirming that the ship has wreck removal insurance or other financial security.
- (2) An authorised officer shall not unreasonably detain or delay the ship.

17. Fees.

The fees for issuing a certificate referred to under regulation 13 shall be —

- | | | |
|-----|---------------------|--------|
| (a) | for a Bahamian ship | \$150; |
| (b) | for a foreign ship | \$300. |

18. Guidance on Wrecks Convention.

The competent authority may provide guidance on the Wrecks Convention.

Dated this 6th day of October, 2015.

Signed
GLENYS HANNA-MARTIN
Minister responsible for Maritime Affairs