

HIGHLIGHTS OF PROPOSED CANADIAN LEGISLATIVE REGIME FOR THE REMEDiation OF HAZARDS RELATED TO SHIPWRECKS: DISCUSSION PAPER



[Clear Seas](#) is an independent, not-for-profit organization that provides impartial and evidence-based research to inform the public and policy makers about marine shipping in Canada.

We are providing this digest on the [Proposed Canadian Legislative Regime For the Remediation of Hazards Related to Shipwrecks: Discussion Paper](#).

This short digest is not meant to be inclusive of all the Review's commentary and/or recommendations, nor are the items mentioned necessarily in the same order as the original report.



MESSAGE FROM THE EXECUTIVE DIRECTOR

One of the challenges of keeping threats to the marine environment on the public's radar is that so many problems can happen below the surface of our rivers, streams, lakes, and oceans. All too often it can be a case of "out of sight, out of mind."

This applies to water pollution issues, the state of fish stocks, and navigation hazards. In the case of the latter, for example, shipwrecks can be very problematic from all three perspectives. However, our current legislative regime is limited in its powers to hold shipowners responsible to remediate all the hazards that may be associated with their vessels becoming shipwrecked.

The purpose of this Discussion Paper is to seek stakeholder views on the possible development of a regime, including legislation based on the *International Convention on the Removal of Wrecks, 2007 (IWR Convention)*, that would comprehensively address the hazards associated with shipwrecks, and that would encompass the special circumstances presented by Canada's unique and vast marine environment.



DR. RICHARD WIEFELSPUETT
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Marine casualties often result in a number of potential or actual shipwrecks in Canada's internal waters and territorial sea¹ each year.

There are numerous federal laws² that touch on "hazards" that can arise from a shipwreck; however, no single piece of legislation deals completely with all facets of hazard removal. Furthermore, existing legislation does not expressly hold shipowners liable for remediation of hazards related to shipwrecks other than obstructions to navigation or immediate threats to the marine environment such as those caused by oil pollution. Even in cases where shipowners are responsible for remediation efforts, all too often Canadian taxpayers bear the costs.

Canada has yet to become a party to the [International Convention on the Removal of Wrecks, 2007 \(IWR Convention\)](#), which was adopted by the [International Maritime Organization \(IMO\)](#) in May 2007, and came into force on April 14, 2015. While the IWR Convention covers many circumstances that may occur when a large vessel becomes a shipwreck, legislation implementing the Convention alone would not protect taxpayers against all shipwrecks or all circumstances.

Legislation that would comprehensively address shipwreck hazards in Canada would need to extend the issues not covered by the Convention such as: non-seagoing vessels, as in the case of the Great Lakes Fleet, as well as other issues considered inadequate for the Canadian context in the areas of compulsory insurance and liability for removal of towed objects - to name just two such examples.

The purpose of the proposed regime would be to ensure that commercial vessels and pleasure crafts that were to become a hazardous wreck in the future, would be removed or remediated by their owner at the owners' expense, and that owners have the financial resources to meet that obligation. It would also allow Canadian authorities to remove or remediate a hazardous wreck where the situation requires immediate action, or where owners fail to meet their responsibilities - at the owners' expense. The proposed regime would not apply to wrecks in existence prior to its coming into force.

The discussion paper divided its commentary into the following headings highlighted below.

1 Territorial Sea: extends up to 12 nautical miles out to sea from the baseline. Countries have sovereignty over the airspace, water, seafloor and subsoil in this zone. Ships from other countries have the "right of innocent passage" through this zone as long as they operate under certain conditions.

2 Including the Navigation Protection Act, Canada Shipping Act, 2001, Arctic Waters Pollution Prevention Act, Canada Marine Act, Fisheries Act, Fishing and Recreational Harbours Act, Department of Transport Act, Canada National Parks Act.

Scope of Application

It is proposed that legislation implementing the *IWR Convention* regime should be extended to Canada's internal waters and territorial sea in addition to the Exclusive Economic Zone (EEZ). This will ensure that the *Convention* applies to all seagoing¹ vessels that call at Canadian ports on the Great Lakes or St. Lawrence Seaway, or on any other internal waterway. It also proposed a modified definition of "ship" to include all vessels whether seagoing or not - and to be consistent with the *Convention* would apply to commercial vessels and pleasure craft², whether or not they are registered, listed, or licensed under the [Canada Shipping Act](#).

Reporting A Wreck and Warning to Mariners (applies to all wrecks)

The *IWR Convention* has provisions that require the reporting and warning of the location of wrecks which are consistent with Canadian regulations and would not introduce any additional administrative or financial burdens to either shipowners or taxpayers.

Hazard Assessments

The proposed regime would, in accordance with the *IWR Convention*, permit Canadian authorities to take necessary and appropriate actions to facilitate the removal or remediation of a shipwreck in Canada's EEZ³, territorial sea or internal waters, only if it is determined that the wreck poses a hazard and the owner fails to take the appropriate action. The *Convention* contains a broad definition of hazard that includes related interests of a Coastal State that go beyond immediate threats to navigation or the marine environment – and speak to the specific interests of a Coastal

1 Excluding warships and other vessels owned or operated by a State for Government non-commercial purposes.

2 Certain classes of small vessels, unlikely to pose a hazard would be exempted.

3 The legislation would require the removal of wrecks of foreign ships in the EEZ only in circumstances permitted by international law.

State such as port activities, tourist attractions, and offshore infrastructure to name but a few.

Implementing a hazard assessment would determine the remediation measures required of a shipowner and would necessitate a broader range of expertise and local knowledge than is necessary under current Canadian law which addresses only navigation hazards or immediate threats to the marine environment. Canadian authorities would need to engage that expertise as necessary. It would also be important for authorities to determine the urgency for remediation or removal of a wreck in order to provide timely directions to the shipowner.

Locating, Marking and Removal of Wreck

Where there is a reason to believe that a wreck is a hazard, the *IWR Convention* requires the Affected State to ensure all practicable steps are taken to establish the precise location of the wreck. In the case of drifting ships, there may be a need for further action to monitor the changing location of the wreck. Once a wreck has been deemed a hazard the *Convention* requires the Affected States to ensure it is marked as a warning to other vessels. Implementing the *IWR Convention* would expand marking requirements as they currently exist in Canadian legislation.

Under the proposed regime, Canadian authorities would be empowered to issue a “wreck removal notice” requiring the shipowner to remove a wreck that is in Canadian waters or Canada’s EEZ, and determined to be a hazard.

Shipowner Liability

The proposed regime would, in accordance with the *Convention*, establish strict liability for the shipowner that would cover the costs of locating, marking and removing a wreck subject to Canada’s jurisdiction, including all related costs to government - such as the assessment of hazards and monitoring of effectual remediation. The fact that a wreck has been determined to pose a hazard would be sufficient to establish the shipowner’s liability.

When it comes to towing vessels, the *Convention* holds the owner of the towing vessel liable for the costs of locating, marking, and removing the wreck of the towing vessel itself, but it would not hold the owner of the towing vessel liable for the wreck of the towed vessel or object.

It is proposed that the Canadian regime follows current industry practice and establish strict liability for the owner of the towed vessel or object for its removal or remediation if it becomes a

wreck. This would be consistent with the Convention. However, the proposed regime would also include a requirement for the owner of the towing vessel to ensure, prior to engaging in the tow operation, that the owner of the towed vessel or object maintain adequate insurance for wreck removal or remediation.

Compulsory Insurance

It is crucial to ensure that shipowners have the financial resources necessary to meet their obligations for wreck removal or remediation, even when the owner becomes insolvent. The proposed regime would therefore require all Canadian ships that are 300 Gross Tonnes (GT) and above to maintain insurance or financial security for wreck removal or remediation in accordance with the *Convention*. Similarly, all foreign ships that are 300 GT and above that call at Canadian ports would also be required to maintain insurance or financial security.

The amount of insurance required would be equal to the limits of liability in accordance with the [Marine Liability Act](#). Shipowners would be well advised to consult with their insurers on the overall amount of liability insurance they would need to protect their exposure to other potential liability, apart from their liability for wreck removal. In addition, the insurance would also need to include provisions to be available for payment of wreck removal claims quite some time after the marine casualty - even if the policy would normally have expired during that period.

The discussion paper noted that just 3% of Canada's registered fleet (approximately 1500 vessels) are 300 GT and above and would therefore be subject to the compulsory insurance requirement. That said, if it were deemed necessary, the proposed legislation would provide the authority for regulations to be developed that could implement an insurance requirement for vessels under 300 GT that fly the Canadian flag or call at Canadian ports. The minimum tonnage threshold that would trigger this insurance requirement has yet to be determined.

Enforcement, Violations, Offenses and Penalties

It is proposed that the legislation be enforced in keeping with current practices for the enforcement of ship safety and liability provisions under the *Canada Shipping Act*, and the *Marine Liability Act*. The legislation would grant Canadian authorities the power to designate enforcement officers and the powers of those officers will be stated. A number of relevant violations and offences would be created. Where appropriate, ships could be detained at a Canadian port or subjected to other restrictions.

Relationship with Other Liability Regimes

The *IWR Convention* may be particularly relevant to the shipowner's liability for oil pollution damage, including preventive measures, pursuant to the [International Convention on Civil Liability for Oil Pollution Damage](#) and the [Bunkers Convention](#), both of which have been ratified by Canada and adopted in the Marine Liability Act. In the future this will also include the [Hazardous and Noxious Substances Convention](#) (HNS Convention) when Canada becomes a party to it.

Enactment of Proposed Regime

As indicated above, the *IWR Convention* came into force on April 14, 2015 for State Parties that already ratified or acceded to it by that date. Canada is not a party to the Convention at the present time. If and when the proposed regime is adopted by Parliament and its provisions are implemented in Canadian law, it would then be possible for Canada to accede to the *Convention* – coming into force in 90 days following the date on which Canada deposits its instrument of accession with the IMO.

Summary

The proposed Regime would achieve its objectives by acceding to the *IWR Convention* and extending its application to Canada's internal waters and territorial sea, as well as to non-seagoing ships. Even with its extended provisions for liability and the possibility of application of compulsory insurance to some vessels under 300 GT, it is not expected to result in significant new costs for the vast majority of shipowners, who as prudent shipowners, already maintain adequate insurance for liability arising from their operations.