Title:
Implementation of the Wreck Removal Convention Act 2011
IA No: DfT00307

Lead department or agency:
Department for Transport

Other departments or agencies:

Impact Assessment (IA)

Date: 16/12/2014

Stage: Final

Source of intervention: International

Type of measure: Secondary legislation

Contact for enquiries:
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Summary: Intervention and Options

RPC Opinion: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£1.06m	-£1.34m	£0.08m	Yes	IN

What is the problem under consideration? Why is government intervention necessary?

The UK is vulnerable to the consequences of shipwrecks. There is currently no legal requirement that a shipowner must remove a wreck or pay for its removal - so the costs of removal and clean-up are often borne by the Government. Therefore, Government intervention is considered necessary to give the Nairobi International Convention on the Removal of Wrecks (ICRW) 2007 the force of law in the UK by implementing the Wreck Removal Convention Act 2011. This would provide a uniform legal basis to locate, mark and remove, or have removed wrecks which pose a hazard to navigation or the marine environment. In line with the polluter pays principle, it would also, by imposing liability and compulsory insurance on shipowners, ensure the Affected State can recover those costs.

What are the policy objectives and the intended effects?

The policy objective of the proposed regime is to improve the Government's response to wrecks by: (i) requiring the registered owner to remove a wreck which poses a hazard to navigation or the marine environment while providing the relevant authorities with the power to intervene if the owner does not do so expeditiously; (ii) making the registered owner liable for the costs of locating, marking and removing the wreck; (iii) requiring the registered owner of ships of 300 gross tonnage (gt) and above to maintain insurance to cover this liability; and (iv) giving State authorities the right of direct action against the insurance provider to recover costs. The proposed regime will also define the territorial application of the wreck removal provisions.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two policy options have been identified. Both options are considered against a counterfactual "do nothing" scenario which would effectively mean that a significant proportion of the costs associated with locating, marking and the removal of wrecks would continue to be met by UK taxpayers.
- Option 1: To implement the ICRW to the UK's Exclusive Economic Zone (EEZ) and include the 'opt-in' to extend coverage to include the UK territorial sea.
- Option 2: To implement the ICRW to the UK's EEZ but do not utilise the 'opt-in'.
(Definitions are provided in Annex 1 - the EEZ extends up to 200 nautical miles from the edge of the territorial sea).
Option 1 is the preferred option because it is acknowledged that most wrecks occur within 12 nautical miles of the coastline (the extent of the territorial seas) and it would also cover incidences on UK territory. The proposed regime will therefore implement Option 1.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 04/2020

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: JOHN HAYES Date: 18/12/2014

Summary: Analysis & Evidence

Policy Option 1

Description: Implement ICRW and include the 'opt-in' to extend coverage to include the UK territorial sea

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.14m	**High:** £3.86m	**Best Estimate:** £1.06m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0	N/A	£0.0m	**£0.1m**
High	£0		£0.5m	**£4.1m**
Best Estimate	£0		£0.2m	**£1.3m**

Description and scale of key monetised costs by 'main affected groups'

1.) The cost to owners of UK flagged ships of certificates to demonstrate compliant insurance has been estimated at around £16,000 per year, assuming 1006 certificates would be needed each year and that the MCA charges £16 to issue each certificate. 2.) Insurers and shipowners would incur more of the cost of dealing with shipwrecks. The direct cost to UK businesses has been estimated at £0 to around £0.46 million per year, with a Best Estimate of around £0.14 million per year (assuming that 50% of the total cost to industry would fall on UK insurers and shipowners).

Other key non-monetised costs by 'main affected groups'

1.) An element of staff training would be required for those dealing with enforcement of the ICRW within the MCA, but the small costs associated with this will be absorbed in the existing costs that are incurred on training for Port State Control checking procedures. 2.) There would be familiarisation costs for UK insurers and shipowners. 3.) Insurers may pass on any increased costs through higher insurance premiums; this impact has not been monetised. 4.) There could be other costs to the owners of non-UK flagged ships (e.g. the cost of obtaining a certificate).

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0	N/A	£0	**£0**
High	£0		£0.5m	**£4.0m**
Best Estimate	£0		£0.3m	**£2.4m**

Description and scale of key monetised benefits by 'main affected groups'

It is assumed the Government would be able to recover a higher share of the costs incurred in wreck removal operations from insurers and shipowners. The benefit to the Government has been estimated at between £0 and around £0.46 million, with a Best Estimate of around £0.28 million per year. This assumes the Government would be able to recover 70% to 95% of the costs incurred in wreck removal operations under Option 1 (with a Best estimate of 85%) compared to 70% under the "do nothing" scenario.

Other key non-monetised benefits by 'main affected groups'

1.) The incentive to operate well-maintained ships should be reinforced, as this would result in lower risk categorisation and lower insurance premiums for shipowners. 2.) There may be other benefits for the Government if less resources are needed to recover costs. 3.) There could also be some small environmental benefits. 4.) The implementation of uniform legal basis for wreck removal should ensure improved financial protection for costal communities in the event of a wreck.

Key assumptions/sensitivities/risks **Discount rate** 3.5%

The estimates of the costs and benefits presented in this IA are very sensitive to the data sources used in this analysis and the assumptions that have been made in this IA. Therefore, these estimates have been used for purely illustrative purposes and should be interpreted as indicative estimates of the order of magnitude of these costs.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0.08m	**Benefits:** £0m	**Net:** -£0.08m	Yes	IN

Summary: Analysis & Evidence

Policy Option 2

Description: Implement ICRW but not utilise the 'opt-in'

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.14m	**High:** £0.86m	**Best Estimate:** £0.16m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0	N/A	£0.0m	**£0.1m**
High	£0		£0.1m	**£1.1m**
Best Estimate	£0		£0.1m	**£0.4m**

Description and scale of key monetised costs by 'main affected groups'

1.) The cost to owners of UK flagged ships of certificates to demonstrate compliant insurance has been estimated at around £16,000 per year, assuming 1006 certificates would be needed each year and that the MCA charges £16 to issue each certificate. 2.) Insurers and shipowners would incur more of the cost of dealing with shipwrecks. The direct cost to UK businesses has been estimated at £0 to around £0.12 million per year, with a Best Estimate of around £0.03 million per year (assuming that 50% of the total cost to industry would fall on UK insurers and shipowners).

Other key non-monetised costs by 'main affected groups'

1.) An element of staff training would be required for those dealing with enforcement of the ICRW within the MCA, but the small costs associated with this will be absorbed in the existing costs that are incurred on training for Port State Control checking procedures. 2.) There would be familiarisation costs for UK insurers and shipowners. 3.) Insurers may pass on any increased costs through higher insurance premiums; this impact has not been monetised. 4.) There could be other costs to the owners of non-UK flagged ships (e.g. the cost of obtaining a certificate).

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0	N/A	£0	**£0**
High	£0		£0.1m	**£1.0m**
Best Estimate	£0		£0.1m	**£0.6m**

Description and scale of key monetised benefits by 'main affected groups'

It is assumed the Government would be able to recover a higher share of the costs incurred in wreck removal operations from insurers and shipowners. The benefit to the Government has been estimated at between £0 and around £0.12 million, with a Best Estimate of around £0.07 million per year. This assumes the Government would be able to recover 70% to 95% of the costs incurred in wreck removal operations under Option 2 (with a Best estimate of 85%) compared to 70% under the "do nothing" scenario.

Other key non-monetised benefits by 'main affected groups'

1.) The incentive to operate well-maintained ships should be reinforced, as this would result in lower risk categorisation and lower insurance premiums for shipowners. 2.) There may be other benefits for the Government if less resources are needed to recover costs. 3.) There could also be some small environmental benefits. 3.) The implementation of uniform legal basis for wreck removal should ensure improved financial protection for costal communities in the event of a wreck.

Key assumptions/sensitivities/risks **Discount rate** 3.5%

The estimates of the costs and benefits presented in this IA are very sensitive to the data sources used in this analysis and the assumptions that have been made in this IA. Therefore, these estimates have been used for purely illustrative purposes and should be interpreted as indicative estimates of the order of magnitude of these costs.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.04m	**Benefits:** £0	**Net:** -£0.04m	No	NA

Evidence Base (for summary sheets)

The Wreck Removal Convention Act 2011 received Royal Assent in the UK in July 2011 but was not commenced because at that time the ICRW had not entered into force internationally. The ICRW will now enter into force internationally on 14 April 2015. It is therefore necessary to commence the Wreck Removal Convention Act 2011, which will also entail having to define the territorial application of that Act as it applies to the ICRW, to coincide with this. The commencement of the 2011 Act and the Wreck Removal Convention Area Order will establish the proposed regime.

The evidence base used for the analysis of the costs and benefits of this measure in this impact assessment was collected in 2010 when developing the impact assessment for the Wreck Removal Convention Bill ('the Wreck Removal Convention Bill Impact Assessment') in advance of the second reading of the Bill in the House of Commons in November 2010. The assumptions made in the Wreck Removal Convention Bill Impact Assessment have also generally been adopted in this impact assessment in the absence of new evidence. This approach has been taken on the grounds of proportionality given the low costs of this measure identified in the Wreck Removal Convention Bill Impact Assessment.

However, a small number of changes have been made where this is proportionate. Firstly, several assumptions have been updated in response to advice from the Maritime and Coastguard Agency (MCA). Secondly, the costs and benefits have been uplifted to 2014 prices using the HM Treasury Gross Domestic Product (GDP) Deflators published on 30 June 2014[1] where relevant; and more recent evidence on the number of ships registered in the UK has been used as this was readily available. Thirdly, the analysis has been updated to include an assessment of the One-in, Two-out status of this policy and estimate the Equivalent Annual Net Cost to Business (EANCB). Fourthly, several improvements have been made to the approach to High and Low scenarios to better reflect the uncertainty regarding the costs and benefits of this measure.

1. Background

This is a new international instrument. The UK does not currently have powers to compel shipowners to remove all wrecks either in the territory or exclusive economic zone (EEZ). Entry into force of the Nairobi International Convention for the Removal of Wrecks (ICRW) in the UK will provide the basis for such power as conferred by the Wreck Removal Convention Act 2011 and ensure that in most cases the Government will be able to recover its full costs, including those associated with any preventative action that may be taken to prevent pollution or other hazards emanating from the wreck, from the registered owner through a simplified regime of liability, compulsory insurance and direct action against the insurer.

The ICRW was adopted by the International Maritime Organization (IMO) in May 2007. The IMO is the United Nations specialised agency with responsibility for safety and security at sea and prevention of marine pollution from ships.

The UK has well developed arrangements for dealing with maritime casualties, including wrecked ships. There are powers conferred by the Merchant Shipping Act (MSA) 1995 and utilised as required. A number of recent high profile incidents have called upon these arrangements, in particular the grounding of the MSC Napoli in January 2007 and the RoRo (Roll on – Roll off) ferry Riverdance that grounded on the North Shore of Blackpool in January 2008. SOSREP (the Secretary of State's Representative for Salvage and Intervention), the Receiver of Wreck, Harbour and Conservancy Authorities and the Lighthouse Authorities (GLAs) all currently have powers in relation to wrecks within the UK's jurisdiction.

The UK is a party to the United Nations Convention on the Law of the Sea 1982 (UNCLOS). The provisions of UNCLOS relating to the prevention, reduction and control of pollution of the marine environment from ships strike a balance between the measures which a coastal State can take within its territory and territorial sea (which extends 12 nautical miles out from the coast) and EEZ or equivalent

[1] GDP deflators at market prices, and money GDP: June 2014 (Quarterly National Accounts)
https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-june-2014-quarterly-national-accounts

area (which extends up to 200 nautical miles from the edge of the territorial sea), and the navigational rights of foreign ships in those zones. The UK's EEZ was adopted back in March 2014.

The 'polluter pays' principle was developed between 1972 and 1974 by the Environment Committee of the Organisation for Economic Co-operation and Development (OECD). The principle has since been developed further and strengthened. In the context of the ICRW, this principle is applied to assist a State Party in recovering from the shipowner the costs associated with locating, marking and removing a wreck.

The ICRW is one of a number of international liability conventions currently, or which soon should be, in force and promotes the general rights and duties contained in other maritime conventions concerned with the protection of the marine environment. The UK has implemented the following relevant international liability Conventions:

- The International Convention on Limitation of Liability for Maritime Claims 1976 (LLMC) and the Protocol of 1996 which came into force in the UK and internationally on 13 May 2004, which allows shipowners a right to limit their liability for any claims arising from a wide range of shipping incidents by setting up a limitation fund from which the Court will pay agreed claims.
- The International Convention on Civil Liability for Oil Pollution Damage (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 ('the Fund') which came into force in the UK on 30 May 1996, and the 2003 Supplementary Fund Protocol by virtue of the Merchant Shipping (Pollution) Act 2006, which entered into force in the UK on 8 September 2006, which covers pollution damage and preventive measures arising from the carriage by tanker of (persistent) oil as cargo by sea.
- The International Convention on Civil Liabilities for Bunker Oil Pollution Damage 2001 (Bunkers Convention), which the UK ratified on 30 June 2006 (The Merchant Shipping (Oil Pollution) Bunkers Convention) Regulations 2006) which entered into force on 21 November 2008, which covers damage and preventive measures arising from a bunker oil spill.

The UK has also implemented EU Directive 2009/20/EC on the insurance of shipowners for maritime claims (the "EU Insurance Directive") which entered into force across the EU on 1 January 2012. This requires owners of UK registered ships, and foreign ships entering EU ports, to maintain third party liability insurance to cover maritime claims subject to limitation under the LLMC.

Nevertheless, the ICRW will fill a gap in the existing international legal framework by providing the first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located in the EEZ. The ICRW also includes an optional clause enabling State Parties to apply certain provisions to their territory, including their territorial sea.

The IMO reports that there were estimated to be almost 1,300 abandoned wrecks worldwide in 2007[2]; and that these wrecks can cause a number of major problems including: (i) depending on its location, a wreck may constitute a hazard to navigation, potentially endangering other vessels and their crews and (ii) depending on the nature of the cargo, there is the potential for a wreck to cause substantial damage to the marine and coastal environments. The ICRW attempts to resolve all of these and other, related, issues.

The ICRW (which does not apply to historic wrecks – that is, any wreck that occurred before its entry into force) requires a ship's registered owner to remove its wreck and empowers the Affected State to remove it on that owner's default, and imposes liability on that owner of the ship for the costs of locating, marking and removing the wreck. The registered owner of any ship registered in, or entering or leaving port or terminal of, a State Party to the ICRW will be required to maintain insurance to cover liability for such costs[3]. The insurance provisions in the ICRW will apply liability arising from all wrecks that fulfil the criteria of a hazard as defined in the ICRW. This liability will apply to all ships regardless of size. However, those ships over 300 gt and above are required to maintain compulsory insurance for this liability which will be enforced through a State Certification Scheme. This Scheme will be similar to that

[2] http://www.imo.org/OurWork/Legal/Pages/RemovalOfWrecks.aspx

[3] It should be noted that there is a risk that a ship from a foreign country which may not have signed up to the Convention would not have insurance and would sail through UK waters without insurance. An example of this would be a foreign flagged vessel that sails up the English Channel, say to a northern European port. This vessel would not be caught by the Convention. The UK would not inspect it on route and would not have the powers to do so. The vessel would only be checked for insurance if it called into a port / terminal of a state that has signed up to the Convention. However, this risk should minimise over time, as more and more states become party to the Convention.

which currently exists for ensuring compliance with the insurance requirements under the Bunkers Convention.

The ICRW also provides that claims for costs may be made directly against the registered owners' insurers. Combined, these measures should improve the prospects of cost recovery.

Industry feedback has been that they fully support the implementation of the ICRW including to the UK territory and territorial waters. Industry believe that legislation and regulation should be applied and be capable of being applied, to the widest extent possible by States. They are of the view that it is crucial for the efficiency of world trade that the same legislation and regulations governing matters such as navigational safety, environmental protection and liability/compensation apply to all ships engaged in international trade and that in so far as possible the same legislation applies in all jurisdictions to which a ship may trade.

2. Problem under Consideration and Rationale for Intervention

The UK relies on shipping for approximately 95% of its imports and exports by volume[4], and has a number of major shipping routes within its waters.

The current arrangements do not allow any of the UK bodies with powers for wreck removal (the Secretary of State acting through SOSREP, GLAs, and Harbour Authorities) to act on a non-UK ship outside the territory or territorial sea, unless there is a risk of pollution in which case SOSREP may act anywhere in the pollution zone. Powers within territorial waters are wider ranging but, broadly, if the wreck presents no risk to safety or navigation and no risk of pollution, there are no powers of removal. Nor do the existing powers include a right to full recovery of the costs of locating, marking, clean-up and removal of wrecks.

Actions of owners and insurers are likely to be influenced by the value of what can be recovered. So, the costs of removal and clean-up are often borne by the Government.

Cost recovery can at best prove extremely problematic whether insurance is in place or not, particularly when it is necessary, in the case of damage caused by non-persistent oil, to prove fault on the part of the shipowner (as defined in the LLMC). Section 154 of the MSA 1995 already applies liability for pollution from all forms of persistent oils in the UK, in addition to the liability applying to oil tankers which are governed by the CLC, the Fund or the Bunkers Convention. Even without the necessity to prove fault, it can still be difficult to successfully recover the costs of damage or response costs from the shipowner.

The Government does not consider it appropriate that the taxpayer should bear the costs of wreck removal or pollution damage.

The ICRW will provide a set of uniform international rules for States to remove, or have removed wrecks that may have the potential to adversely affect the safety of lives, goods and property at sea, as well as the marine environment. It provides criteria for determining the hazard posed by wrecks including proximity to shipping routes, vulnerability of port facilities, and potential for damage to the marine environment. The ICRW will also clarify the rights and obligations regarding the identification, reporting, locating and removal of wrecks, and impose liability on the registered owner of the vessel for the costs of locating, marking and removing the wreck.

3. Policy Objective

The entry into force of the ICRW in the UK will enable the UK to act on wrecks, whatever the flag, in the EEZ, as well as providing a system of insurance and liability for claiming costs from the registered owner or insurer. Exercise of the option to apply the ICRW in the territory and territorial sea will allow similar action and cost recovery in these areas where wrecks and associated hazards are most likely to cause a threat to navigation and environmental damage, providing a consistent regime in the UK's waters and its zone.

There are existing powers for dealing with wrecks in the UK's territory and territorial sea and in the EEZ equivalent area, but these depend on the authority on which the power is conferred, its geographical

[4] https://www.gov.uk/government/policies/sustaining-a-thriving-maritime-sector

location and the threat posed. The powers apply to a number of bodies and are set down in the MSA 1995, as amended.

The Secretary of State acting through SOSREP, the Receiver of Wreck, Harbour and Conservancy Authorities and the Lighthouse Authorities all currently have different powers in relation to wrecks. The current arrangements do not, however, allow any of them to act on a non UK ship outside the territory or territorial sea, except where SOSREP may act to deal with a pollution risk. The entry into force of the ICRW in the UK will enable the UK to act on wrecks, whatever the hazard or flag, in the EEZ, as well as making the registered owner liable for costs and requiring the owner to have insurance cover. If the UK exercises the option to apply the ICRW in the territory and territorial sea it will allow similar action and cost recovery in these areas where wrecks and associated hazards are most likely to cause a threat to navigation and environmental damage.

4. Description of options considered

4.1 Do nothing

In effect, this would mean continuing to rely on the existing legal position for the removal of wreck and associated costs (see reference to the LLMC under section 5.1).

The existing powers for dealing with wrecks in the UK's territory and territorial sea and in the EEZ equivalent area are limited compared to the ICRW's arrangements. They depend on the geographical location of the wreck, the authority, and on the threat posed. These powers apply to a number of bodies (see below) and are set down in the MSA 1995 as amended.

SOSREP (the Secretary of State's Representative)

The role was created in 1999 as part of the Government's response to Lord Donaldson's Review of Salvage and Intervention and their command and control. Exercising powers conferred on the Secretary of State (generally referred to as SOSREP's powers), SOSREP is able to oversee, control and, if necessary, to intervene and exercise "ultimate command and control" acting in the over-riding interest of the UK in maritime casualty operations in UK jurisdictional waters involving ships or fixed platforms.

Regarding ships, SOSREP's powers extend to all ships in the designated area in pollution cases only. His safety related powers are limited to UK territory and territorial sea. The ICRW will not only allow hazards to be removed from the EEZ and, optionally, territorial waters, but also provide a means for defined bodies to recover costs.

The 1997 Merchant Shipping and Maritime Security Act (sections 100A and B of the MSA 1995 as amended) gives SOSREP the powers to declare a temporary exclusion zone should a hazard be determined.

Receiver of Wreck (ROW)

The ROW has no powers to require wreck removal. But any wreck material found in UK territorial waters (i.e. to the 12 mile limit), or outside the UK and brought within UK territorial waters, must by law be reported to the Receiver of Wreck (ROW) under section 236 of the MSA 1995. Once a report has been received, the ROW will investigate ownership of the wreck items.

The ROW's remit is set down in the MSA 1995, Part IX, and Chapters 1-2. It covers wreck in UK territorial waters, and wreck landed in the UK from outside UK territorial waters. The ROW has a duty to give legal owners the opportunity of recovering their property, and to ensure that a salvage award is paid to the legal salvor, when due. The ROW can recover any costs incurred.

Duty & Rights of Salvor: On recovering wreck material, the finder should declare it promptly (where possible within 28 days) to the ROW giving a description of the wreck and will usually be asked to hold it to the Receiver's order. A salvor acting properly under the law is entitled to a salvage award.

Duty & Rights of Owner: The owner of any wreck must prove ownership to the satisfaction of the Receiver within one year. On payment of expenses and an appropriate salvage award, the owner is entitled to have his or her property returned.

Harbour and conservancy authorities

Where the wreck is, or is likely to, become an obstruction or danger to navigation or to lifeboats engaged in lifeboat service, section 252 of the MSA 1995 provides harbour and conservancy authorities with powers to take possession of and raise, remove or destroy such a wreck. It also provides powers to mark (light or buoy) wrecks in or near any approach to any harbour or tidal water under the control of a harbour authority or conservancy authority. Section 252 of the MSA 1995 also contains a power of sale and permits harbour or conservancy authorities to recover their expenses incurred in selling the ship from the proceeds of sale.

Powers of lighthouse authorities

Under section 253 of the MSA 1995 a General Lighthouse Authority (GLA) can take possession of and raise, remove or destroy a wreck (where there is no harbour authority or conservancy authority power). It also provides powers to mark (light or buoy) a wreck in any fairway or on the seashore or on or near any rock, shoal or bank in the UK or any of the adjacent seas or islands if there is no harbour or conservancy authority with the necessary power, if the wreck is or is likely to become an obstruction or danger to navigation or to lifeboats engaged in lifeboat service. Section 253 of the MSA 1995 also permits GLAs to recover their expenses from the sale of the ship or directly from the relevant person.

Penalties under the Merchant Shipping Act 1995

Failure to report any wreck which has been found (including by the owner) constitutes an offence under section 236 of the MSA 1995. Finders who do not report their finds are liable to pay a fine of up to £2,500 for each offence, will lose any salvage rights, and have to pay the person entitled to the find twice the value of the find.

4.2 Option 1: Implementation of the Wreck Removal Convention in the UK but extend coverage to UK territory and territorial seas

Under this option, the UK would implement the ICRW. It would apply to the UK's EEZ, and under the 'opt in', to UK territory and territorial seas (see Annex 1 for definitions). Option 1 would place liability on the registered owner of a ship for the costs of locating, marking and removing a wreck, unless the cause of the wreck was due to force majeure (such as war, acts of God, etc); or was due to an act or omission of a third party.

Article 1(8) of the ICRW defines the 'registered owner' thus:

"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."

The ICRW will not apply to ships operated by a State for non-commercial purposes. But, it would require all ships over 300 gt to have compulsory insurance, backed by State Certification and would give affected States a right to take direct action against the providers of financial security. It would improve the effectiveness of UK maritime liability legislation through the implementation of the international regime governing liability and compensation for locating, marking and removing a wreck.

4.3 Option 2: Implementation of the ICRW but not extend coverage to UK territory and territorial seas

Under this option, the UK would implement the ICRW but would not make use of the 'opt in' to extend coverage to territory and territorial seas (see Annex 1 for definitions). Apart from lack of coverage for territorial seas the option would be identical to Option 1. However, the majority of wrecks are in shallow waters where they can pose the biggest risks to the environment and navigation. The majority of such waters are to be found in the territorial seas and therefore the benefits of Option 2, both monetary and otherwise, would be considerably less than Option 1.

5. Costs and benefits of each option

5.1. Do nothing (the counterfactual)

There would be no additional costs to UK shipowners operating in the UK and other States that do not become party to the ICRW. However, any UK registered ships wishing to put in to a State that is party to the ICRW would be required to comply with the insurance and certification requirements of the ICRW, as such a State must ensure any ship, wherever registered, has the required insurance.

In the UK, there would continue to be costs to bodies involved in responding to the incident such as local authorities, the MCA, General Lighthouse Authorities, Harbour and Conservancy Authorities. These bodies would continue to bear all of these costs initially, and cost recovery would continue to vary from zero to full recovery, as previous cases have done. In future incidents where this does involve full recovery, there will be a cost to the Government and hence the UK taxpayer. Indeed, the authorities would still be responsible for the locating, marking and removal of wrecks, so far as they can under the law as it stands and would where possible recover costs, but would have no powers to act against non UK registered ships that wreck outside UK territory and territorial waters, except where SOSREP may act to deal with a risk of pollution.

The Government would not have access to any additional powers to mitigate the environmental and social impacts of wrecks. Whilst the UK already has worldwide recognised and respected procedures in place for dealing with incidents around its coasts, the UK cannot act on non UK registered ships outside its territorial waters, except where SOSREP may act to deal with the risk of pollution.

Under the LLMC, a shipowner has the right to limit his liability in respect of various types of maritime claims, including loss of life or personal injury, loss of damage to property, and loss resulting from delay in the carriage by sea of cargo, passengers or luggage. Claims are grouped into two categories:

1. claims for loss of life or personal injury;
2. all other claims which, for the purpose of this document are grouped under the heading “property claims”. Wreck removal would fall under this category.

Different limits of liability apply to the two categories of claims; the limit of liability for loss of life or personal injury is significantly higher than the limit of liability for property claims. The limits of liability under LLMC start at 2 million SDR (Special Drawing Rights) for loss of life or personal injury and at 1 million SDR for property claims with additional amounts relating to the ship’s tonnage. The SDR is an artificial currency unit used by the International Monetary Fund. Its value is calculated according to the currency of a number of major industrialised nations and so its relative value in any one currency fluctuates. Other international maritime liability treaties use the SDR as the unit of account.

Owners are entitled to limit their liability for “claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked or abandoned, including anything that is or has been on board such ship” under Article 2(1) (d) of the LLMC. However, when the UK ratified the LLMC by reservation we disapplied this right. So claims for wreck removal expenses are not subject to limitation under UK law.

Whilst claims for wreck removal are not subject to limitation under UK law, the amount of insurance required is still linked to the limits of liability under the LLMC regime. These limits increase by accumulative, incremental stages according to the gross tonnage of the ship.

Lack of insurance can increase the difficulty of recovery in practice. An IMO Resolution, adopted in November 1999, encouraged owners of seagoing ships to maintain adequate insurance to meet their liabilities, and to ensure that their ships carry on board a certificate issued by the insurer. The MCA set out these voluntary guidelines in Marine Guidance Note (MGN) 135(M). Rather than imposing compulsory insurance on UK flagged ships, the Government looked to shipowners to comply with this recommendatory notice.

However, since 2012, it is a requirement under the EU Insurance Directive for owners of UK registered ships, and foreign ships entering UK ports, to maintain third party liability insurance to cover maritime claims subject to limitation under the LLMC. Most UK shipowners are therefore already likely to maintain comparable third party insurance to that required under the ICRW. The International Group of Protection and Indemnity Clubs (IGP&I Clubs) support this view and confirmed in September 2014 that LLMC insurance arrangements would ‘exceed the minimum required under the ICRW’ for UK flagged ships

entered in the Group. The UK Chamber of Shipping has also confirmed that they expect vessel owners to 'already have sufficient insurance cover to meet the requirements of the ICRW' in place.

Even so, difficulties can still arise when a ship is insured. This is because third party liability marine insurers almost always provide indemnity insurance which means that a claim must be pursued against the shipowner. If the shipowner is held liable the insurer indemnifies the shipowner paying the claim. This is generally referred to as the 'pay-to-be-paid' rule and can complicate a successful claim which might be particularly difficult if the shipowner proves to be legally inaccessible, or UK law cannot be applied.

5.2 Option 1: Implementation of the Wreck Removal Convention in the UK and extending coverage to UK territory and territorial seas

This is the preferred option of the Government. The ICRW would apply insurance obligations to shipowners whose ships are 300 gt or more. But unlike the current requirements under the EU Insurance Directive, the Secretary of State, acting through the MCA (an executive agency of the Department for Transport) would be required to issue a State Certificate attesting that insurance is in place to all UK registered ships with satisfactory insurance and some non-State Party ships at his discretion. The entry into force of the ICRW would add to the existing regimes for dealing with wrecks in UK waters. It would allow the UK to deal with all wrecks that pose a threat to the environment or navigation within the territorial waters and EEZ regardless of flag State. The benefit of this is that the authorities, in addition to being able to react quickly to any incident within its waters, would have the reassurance that the owner is primarily responsible for action and, backed by insurance, is responsible for costs. Quick action can reduce both the scale and pollution risk of an incident and can reduce the cost of dealing with it.

Under the ICRW, the responsibility for the removal of the wreck would rest with the shipowner. The shipowner would be required to follow written directions from the State for the removal of the wreck where the State has determined that the wreck poses a hazard (as determined in accordance with the ICRW). The directions would be based on considerations of the safety and protection of the marine environment. Failure to follow this direction, or where the hazard posed by the wreck is particularly severe, would allow the UK authorities to remove the wreck and obtain reimbursement from the shipowner and the insurance company. Implementation of the ICRW would make it easier for authorities in the Affected State to recover from the shipowner or their insurers the costs associated with the locating, marking and removal of a wreck.

The most problematic wrecks are often those that lie in sensitive areas within a State's territory or territorial waters. To address this, the UK proposes to exercise the option in the ICRW enabling State Parties to apply its provisions to this area. Principally, these are the same provisions that apply to the EEZ but relaxes some of the requirements under Article 9 (measures to facilitate the removal of the wreck) so that within the territory and territorial sea the only ICRW obligations on the affected State under Article 9 are to set a deadline for the removal of the wreck by the registered owner and to inform the registered owner of the deadline.

Shipowners of ships of 300 gt and above.

- Under the ICRW, all shipowners would be liable for costs associated with locating, marking and removing wrecks. However, the compulsory insurance provisions in the ICRW would apply only to ships of 300 gt and above. The owners of ships of 300 gt and above must maintain insurance or other financial security to cover their liabilities in the event of a wreck and obtain a State Certificate attesting to the effectiveness of that insurance or financial security. As previously mentioned, it is believed that most UK registered ship owners already maintain insurance of this sort.
- Since 21st November 2008, all vessels over 1000 gt entering or leaving a port or terminal in a State Party, including the UK, are already required to have a State-issued Certificate attesting to the maintenance for insurance to meet the requirements of the Bunkers Convention. Therefore, the only ships that would be liable once the ICRW enters into force that are currently not required to hold a State Certificate would be those of between 300 gt and 1000 gt. As of 31 December 2013, there were 362 UK registered vessels between 300 and 1000 gt.
- Under the ICRW, the liabilities would apply to all vessels over 300 gt of all State Parties. Owners of non-State Party vessels that enter or leave a UK port would also be required to maintain insurance or

other adequate financial security to comply with the liabilities specified in the ICRW. Compliance would be verified by Port State Control (PSC) inspections.

Maritime and Coastguard Agency (MCA)

- Under Option 1, the Government would have a statutory duty to issue State Certificates for UK flagged ships with satisfactory insurance cover. The MCA carries out the PSC function for foreign flagged ships entering UK ports. The PSC checks would be extended to ensure that ships of 300 gt and above carry a State Certificate for wreck removal insurance. Under the CLC, oil tankers are already required to have a State Certificate which is issued by the MCA. Shipowners of vessels over 1000 gt also require State Certificates to comply with the insurance requirements in the Bunkers Convention. Therefore, the MCA already has a well-established system in place to deal with issuing of State Certificates and for checking that ships coming into UK ports carry the required State Certificates.

Providers of Financial Services

- The International Group of Protection and Indemnity Clubs (IG P&I Clubs) insure around 90% of the world's ocean going tonnage for certain third party risks[5] and agree that Government should ratify the Convention. The IG P&I Clubs do not consider the implementation of the ICRW to be an additional cost burden to those shipowners who already carry third party liability insurance. The LLMC Protocol is already in force and IG P&I Club members would therefore already be covered for their liabilities under the ICRW. However, it should be noted that there would be an additional cost burden to those shipowners who do not already have third party liability insurance, although even if the UK did not implement the ICRW, the liability requirements of the ICRW would still apply to those vessels entering or leaving ports of States that had implemented it.

Harbour and Lighthouse Authorities

- The ICRW would have a positive effect on such authorities as it should make it significantly easier for them to recover costs they have incurred as a result of any incidents involving wreck removal.

Coastal Businesses

- As the claims can only be made by an Affected State, no additional power to claim is given to affected businesses under the ICRW and so their position would be unchanged.

Issues of equity and fairness

- It is considered that UK shipowners would not be placed under a significant disadvantage by the UK implementing the ICRW as there are no onerous burdens being placed on the shipowner except for maintaining insurance and it is understood that the majority of UK registered ships of 300 gt and above already have insurance, although robust data is not available to confirm this.

5.2.1 Benefits of Option 1

5.2.1.1 Benefits to Government from Increased Cost Recovery (monetised)

The main benefit of the implementation of Option 1 would be that it would simplify the wreck removal process, placing liability on shipowners and their respective insurers and enabling any costs incurred by the Government to be recovered directly from insurers, which will facilitate the possibility of full recovery of costs in the event that Government is involved in wreck clean-up and removal operations. Between 1993 and 2010, on average, 70% of costs incurred by Government in wreck clean-up and removal operations were recovered according to data collected when preparing the Wreck Removal Convention Bill Impact Assessment. It is assumed that implementation of the ICRW would significantly improve the

[5] http://www.igpandi.org/

probability of the Government being able to recover the full cost of interventions in the case of a wreck occurring in UK waters in the future.

It is not possible to make a meaningful forecast of the number of wreck incidents occurring in any given year under the status quo. For example, the number of claims recorded between 1993 and 2010 varies from 0 to 10 per year, with the total cost of individual incidents also showing considerable variance, from under a thousand pounds to more than £11 million. Neither is it possible to make any meaningful analysis of the impact the EU Insurance Directive has had on cost recovery given the lack of maritime incidents that have occurred since it entered into force in 2012.

For the purposes of this Impact Assessment, the costs of wreck removal claims between 1993 and 2010 have been converted to 2014 prices using the HM Treasury Gross Domestic Product Deflators published on 30 June 2014. On this basis, under the "do nothing" scenario, it is assumed that the Government would incur around £1.9 million of costs per year on average (2014 prices) but that it would recover around £1.3 million of these costs per year on average (2014 prices) and that its unrecovered costs would therefore be around £0.6 million per year on average (2014 prices). This is based on the assumptions of a continuation of historical average annual cost of wreck removal operations and average cost recovery of 70% continuing in future.

The impact on cost recovery due to implementation of the ICRW is also very uncertain. In line with the Wreck Removal Bill Impact Assessment, it has been assumed that the Government would be able to recover 70% to 95% of the costs incurred in wreck removal operations under Option 1, with a Best estimate of 85%. This compared to 70% under the status quo. Of course, it should be noted that the true figure could vary from this. In particular, it is believed that implementation of the ICRW should allow the Government to fully recover costs in many cases. Therefore, the estimates of the benefits presented in this impact assessment should be treated as indicative estimates of the potential order of magnitude of these benefits.

Due to the significant uncertainties, no account has been taken of possible future increases in safety or technology that could decrease the number of shipwrecks going forward. Furthermore, no account has been taken of the potential for Option 1 to increase the average annual cost of wreck removal operations in the future if it allows the Government to take action on more wrecks.

As a high estimate of the potential benefits of Option 1, it is assumed that the implementation of the ICRW would increase the average rate of cost recovery from 70% to 95%. This assumes that the full theoretical benefit of liability is realised, with a small minority of cases where full cost recovery is impossible. On this basis, the annual benefit could be estimated to be approximately £0.46 million per year in 2014 prices [i.e. around £1.9 million x (0.95 - 0.70)].

As a central estimate of the potential benefits, it is assumed that the implementation of the ICRW would increase the average rate of cost recovery from 70% to 85%. On this basis, the annual benefit could be estimated to be approximately £0.28 million per annum in 2014 prices [i.e. around £1.9 million x (0.85 - 0.70)].

As a low estimate of the potential benefits, it is assumed that implementation of the ICRW would not increase cost recovery beyond the current extent, meaning that the estimated monetised benefits would be £0 in 2014 prices. However, whilst implementation would not increase the amount recovered under this scenario, it could still potentially provide a benefit if it simplifies the process by which Government may recover costs from a shipowner or reduces the need for government intervention in the event of a wreck; due to a lack of evidence, this benefit has not been monetised in this Impact Assessment.

On the basis of the above estimates, the total monetised benefits over the 10 year appraisal period for Option 1 are estimated at around £0 to £4.0 million, with a Best estimate of around £2.4 million (Price Base Year 2014, PV Base Year 2015).

5.2.1.2 Environmental Benefits of Option 1 (non-monetised)

Under the ICRW, a shipowner must remove his wreck and a State may act when a wreck constitutes a hazard. Article 1 (5) of the ICRW defines a hazard which determines whether a State can act under the ICRW, as including an incident which 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. These related interests include maritime coastal, port and estuarine activities, including fisheries activities; tourist attractions and other economic interests of the area concerned; the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources

and of wildlife; and offshore and underwater infrastructure. This wide definition of hazard should ensure that the UK is able to act upon any threat to the environment. Importantly it would also allow the UK to react immediately to casualties of non-UK registered ships in the EEZ. A vessel in distress can quickly deteriorate (as was the case with the MSC Napoli) and decisions need to be made quickly in order to minimise the environmental impact or navigational danger through the leakage of oil or cargo.

The ICRW would also provide an incentive for shipowners to operate well-maintained ships, as insurers would be likely to consider the quality and record of the ship when calculating insurance premiums.

Due to the limitations of the available evidence (e.g. there is no quantitative evidence available on the extent that it would provide an additional incentive for shipowners to operate well-maintained ships), the above benefits have not been monetised in this impact assessment.

5.2.1.3 Other Benefits of Option 1 (non-monetised)

Local Authorities, General Lighthouse Authorities, Harbour and Conservancy Authorities and the MCA would be more likely to obtain compensation for any damages incurred due to the liability and direct action provisions within the Convention. The process of cost recovery should be easier for claimants, and could be expected to reduce the need to take out legal proceedings but where this is unavoidable, reduce the length and cost of any subsequent court action.

Although coastal businesses would not be able to make claims under the ICRW, the uniform legal basis for States Parties to remove, or have removed, wrecks which pose a hazard to navigation or the marine environment and the liability and cost recovery elements of the ICRW should ensure that there is improved financial protection for coastal communities in the event of a wreck. It should also ensure that any impact by a wreck on coastal businesses and communities is lessened. If any pollution damage is caused by persistent oil (under the CLC or the Fund regime) or bunker oil spilling from the wreck (under the Bunkers Convention) then claims under these regimes would still be permissible.

Again, due to the limitations of the available evidence (e.g. there is no quantitative evidence available on the extent that it would reduce the need to take out legal proceedings), the above benefits have not been monetised in this impact assessment.

5.2.2 Costs of Option 1

As of 31 December 2013, there were 1006 UK registered ships of 300 gt and above that would need to maintain insurance to cover their liability. It is assumed that ships over 1000 gt should already have adequate insurance cover in place under the provisions of one of the other Conventions, including the Bunkers Convention. Therefore, new insurance requirements brought about by the ICRW should only apply to the 362 ships that are between 300gt and 1000gt. However, as previously stated, the owners of these 362 UK registered ships, and foreign ships entering UK ports, should already have adequate insurance cover in place under the provisions of the EU Insurance Directive.

Since 21st November 2008, all ships entering or leaving a port or terminal in a State Party, including the UK, that are 1000 gt and above have required a State Certificate attesting to the maintenance of insurance to meet the requirements of the Bunkers Convention. Therefore, the only ships that would be liable once the ICRW enters into force that would not already be required to hold a State Certificate would be those of between 300 gt and 1000 gt.

Except for the cost of the required State Certificate, the IG P&I Group do not consider that the implementation of the ICRW would be an additional cost burden to shipowners who already carry third party liability insurance and have said that it is unlikely that UK registered shipowners' premiums would increase as a direct consequence of entry into force of the ICRW. However, the cost of insurance is subject to market influences and premiums will depend on the marine insurance market at the time. Underwriters take claims records into account and, therefore, an increase in the number of claims may result in an increase in premiums in the future.

For any shipowners of vessels over 300 gt but under 1000 gt who do not require insurance under current legislation, there would be an additional cost of obtaining insurance. However, as stated, it is understood that the majority of UK flagged vessels maintain adequate insurance through compulsory regimes.

The owners of UK flagged ships would also need to purchase a State Certificate from the MCA. A fee would be charged to cover the MCA's administrative costs of issuing the certificate. The MCA currently

charges a £16 fee to issue a certificate under the Bunkers Convention[6]. The MCA would need to certify all UK registered ships of 300 gt and above each year and, on a discretionary basis, any foreign registered ships of 300 gt and above if the State of the ship's registry is not a party to the ICRW. The cost of this certificate would be identical to that for a UK registered ship.

The MCA would also be required to check that ships of 300 gt and above entering UK ports carry a State Certificate covering the ICRW. This would be carried out as part of the existing Port State Control procedures, and hence is not expected to impose any additional costs.

5.2.2.1 Costs to shipowners of acquiring certification (monetised)

On the basis that 1006 UK flagged vessels would each year be required to obtain certification of insurance to cover liabilities in the event of a shipwreck occurring, costing £16 in 2014 prices, the estimated cost to the owners of UK flagged vessels is around £16,000 per year in 2014 prices [i.e. 1006 x £16]. For the purposes of this impact assessment, it is assumed that the number of ships on the UK flag would remain constant over time and that the fees for issuing a certificate would remain constant in real terms. However, it should be noted that this is subject to uncertainty (e.g. the fees for issuing a certificate are likely to be adjusted over time as the intention is that these are set on a cost recovery basis).

5.2.2.2 Costs to shipowners/insurers of dealing with shipwrecks (monetised)

In line with the Wreck Removal Bill Impact Assessment, it has been assumed that the overall additional costs to shipowners (through insurance premiums) and insurers (through insurance pay-outs) would be equal to the benefit to Government from implementation of the convention, since ultimately one or other party would be responsible for the marking or removal of the wreck as necessary.

However, it should be noted that the vessels involved in such wreck incidents would not necessarily be either UK flagged or UK owned. Consequently, these costs would not necessarily represent a cost to the UK. This is supported by the available evidence as a review of the data from 1993 to 2010 undertaken for the Wreck Removal Bill Impact Assessment suggested that only a small minority of the vessels involved in wreck incidents were registered to the UK flag, although the number of vessels that were owned by interests in the UK was difficult to establish.

Therefore, the estimated monetised costs to the UK of implementing the ICRW should reasonably be expected to be less than the estimated monetised benefits that are recorded above. So, overall, it is expected that Option 1 would be likely to result in a Net Benefit to the UK.

To reflect the uncertainty regarding the proportion of the total additional costs incurred by industry (i.e. shipowners and insurers) that would represent costs to the UK, the following approach has been taken in this impact assessment.

The Low scenario of the costs to the UK assumes that 0% of these costs would represent costs to the UK and the High of the costs to the UK scenario assumes that 100% of these costs would represent costs to the UK.

To illustrate the potential for the ICRW to result in a Net Benefit to the UK, an illustrative assumption has been made for the purposes of producing the Best estimate of the costs to the UK in this impact assessment. In line with the Wreck Removal Bill Impact Assessment, for the Best estimate, it has been assumed that only 50% of the total additional costs that would be incurred by industry (i.e. shipowners and insurers) would represent costs to the UK. This illustrative assumption is intended to show the potential for the ICRW to result in a Net Benefit to the UK if it makes it easier to recover costs from foreign ships which experience difficulties in UK waters. However, all estimates of monetised costs and benefits in this impact assessment should be treated as indicative estimates that are intended to illustrate the broad orders of magnitudes of the costs and the benefits of Option 1.

For consistency, the other assumptions are the same as in Section 5.2.1.1. Consequently, on the basis of the above assumptions, this cost to the UK has been estimated at around £0 (Low scenario) [i.e. £0 (see Section 5.2.1.1) x 0%] to £0.46 million (High scenario) per year in 2014 prices [i.e. around £0.46 million (see Section 5.2.1.1) x 100%], with a Best estimate of around £0.14 million per year in 2014 prices [i.e. around £0.28 million (see Section 5.2.1.1) x 50%].

[6] https://www.gov.uk/certificate-of-proof-of-civil-or-passenger-liability-insurance

5.2.2.3 Familiarisation costs to business (non-monetised)

Some businesses would incur familiarisation costs due to the need to familiarise themselves with the proposed regime. As no evidence is currently available on this issue, this cost has not been monetised for the purpose of this impact assessment as both the time that it would take to familiarise, and the number of businesses that would need to do this, are uncertain. However, it should be noted that the ICRW was adopted by the International Maritime Organization (IMO) in May 2007; the Wreck Removal Convention Act 2011 received Royal Assent in the UK in July 2011; and it is planned to bring the proposed regime into force on 14 April 2015 to coincide with the date the ICRW will enter into force internationally. It is expected that these factors will limit the additional familiarisation costs that would arise from the introduction of the proposed regime.

5.2.2.4 Total monetised costs to business of Option 1

On the basis of the above estimates, the total monetised costs to business over the 10 year appraisal period for Option 1 are estimated at £0.1 million to £4.1 million, with a Best estimate of around £1.3 million (Price Base Year 2014, PV Base Year 2015).

5.2.3 Total Net Benefit of Option 1

On the basis of the above estimates, the total Net Benefit of Option 1 over the 10 year appraisal period for is estimated at around -£0.14 million to around £3.86 million, with a Best estimate of around £1.06 million (Price Base Year 2014, PV Base Year 2015).

The High Scenario of the Net Benefit is calculated assuming an increase the average rate of cost recovery from 70% to 95% and that 0% of the costs to shipowners/insurers of dealing with shipwrecks would represent costs to the UK, and is therefore equivalent to the High scenario of the benefits minus the Low scenario of the costs. In contrast, the Low Scenario of the Net Benefit is calculated assuming that there would be no increase in the average rate of cost recovery from 70% and that 100% of the costs to shipowners/insurers of dealing with shipwrecks would represent costs to the UK, and is therefore equivalent to the Low scenario of the benefits minus the Low scenario of the costs. This approach is taken so that the assumed increase in cost recovery is consistent for both the costs and benefits.

5.3 Option 2: Implementation of the Wreck Removal Convention but not extended coverage to UK territory and territorial seas

5.3.1 Costs

UK insurers and shipowners would incur more of the cost of dealing with shipwrecks. But, since the scope would be slightly more limited in comparison to Option 1, the costs to industry would be less than estimated under Option 1. In particular, it is assumed the majority of the costs of locating, marking and removing wrecks within the UK territory and territorial waters would still fall to the Government. These wrecks are often the most problematic and are more likely to impact on sensitive areas of coastline and/or result in harbour closures. The Government would still bear the cost of marking and removal of wrecks in UK territorial waters, unless costs could be recovered under the limited provisions of existing legislation or the provisions of one of the other conventions mentioned in this impact assessment, or unless the value of the cargo or the vessel was such that the shipowner or insurer undertook the recovery process.

UK registered vessels that do not operate outside of the UK territorial seas would not require insurance. Foreign flagged vessels operating out of UK ports but not outside of the UK territorial seas would also not be required to maintain insurance under the UK's implementation of the ICRW. But accepting that the majority of UK registered vessels over 300 gt already maintain adequate compulsory insurance under other Conventions or the EU Insurance Directive, it is assumed that the number of UK registered vessels affected would be negligible.

The MCA would still be required to issue certificates to UK registered ships and to non UK registered ships whose State has not ratified the ICRW on a discretionary basis. Therefore, it is assumed certification costs would be the same as Option 1. In addition, the MCA would also still be required to check certificates of those ships entering or leaving UK ports.

Insurers and shipowners would incur more of the cost of dealing with shipwrecks. For the purposes of this Impact Assessment, it has been assumed that of the order of 70-80% of the wrecks within the

geographical area that would be affected by Option 1 occur within UK territorial waters. This is based on expert advice from the MCA, although it should be noted that quantitative evidence on this is not available on this issue, so this percentage is subject to uncertainty. Given the assumed proportion of wrecks that occur within UK territorial waters, an illustrative assumption has been made for the purposes of this impact assessment that 25% of the historical average annual cost of wreck removal operations would be incurred each year in the future within the geographical area that would be affected by Option 2. As the other assumptions are the same as under Option 1, this assumption means that the estimates of costs to industry from the Government being able to recover a higher share of the costs of wreck removal operations would be 75% lower under Option 2 than under Option 1. On the basis of these assumptions, this cost to the UK under Option 2 has been estimated at £0 [i.e £0 (see Section 5.2.2.2) x 25%] to around £0.12 per year [i.e. around £0.46 million (see Section 5.2.2.2) x 25%], with a Best Estimate of around £0.03 million per year [i.e. around £0.14 million (see Section 5.2.2.2) x 25%]. However, these estimates of the monetised costs of Option 2 are very sensitive to the assumptions that have been made, and should therefore be treated as illustrative orders of magnitude.

On the basis of the above estimates, the total monetised costs to business over the 10 year appraisal period for Option 2 are estimated at around £0.1 million to £1.1 million, with a Best estimate of around £0.4 million (Price Base Year 2014, PV Base Year 2015).

5.3.2 Benefits

It is assumed that the Government would be able to recover a higher share of the costs incurred in wreck removal operations from insurers and shipowners. As mentioned, the majority of wrecks occur within territorial waters. Therefore, it is expected that the benefits that would arise from the Government being able to recover a higher share of the costs of wreck removal operations would be lower under Option 2 than under Option 1. As noted above, an illustrative assumption has been made for the purposes of this impact assessment that 25% of the historical average annual cost of wreck removal operations would be incurred each year in the future within the geographical area that would be affected by Option 2. As the other assumptions are the same as under Option 1, this assumption means that the estimates of these benefits would be 75% lower under Option 2 than under Option 1. On the basis of these assumptions, the benefit to the Government under Option 2 has been estimated at between £0 [i.e. £0 (see Section 5.2.1.1) x 25%] and around £0.12 million [i.e. around £0.46 million (see Section 5.2.1.1) x 25%] with a Best Estimate of around £0.07 million per year [i.e. around £0.28 million (see Section 5.2.1.1) x 25%]. However, these estimates of the monetised benefits of Option 2 are very sensitive to these assumptions, and should therefore be treated as illustrative orders of magnitude.

On the basis of the above estimates, the total monetised benefits over the 10 year appraisal period for Option 2 are estimated at around £0 to £1.0 million, with a Best estimate of around £0.6 million (Price Base Year 2014, PV Base Year 2015).

5.3.3 Total Net Benefit of Option 2

On the basis of the above estimates, the total Net Benefit of Option 2 over the 10 year appraisal period for is estimated at around -£0.14 million to around £0.86 million, with a Best estimate of around £0.16 million (Price Base Year 2014, PV Base Year 2015).

The High Scenario of the Net Benefit reflects the High scenario of the benefits and the Low scenario of the costs; whereas the Low Scenario of the Net Benefit reflects the Low scenario of the benefits and the Low scenario of the costs. This approach is taken so that the assumed increase in cost recovery is consistent for both the costs and benefits (see Section 5.2.3 for more details).

6. Enforcement, Sanctions and Monitoring

The ICRW does not itself impose any specific measures relating to enforcement or sanctions but imposes the following obligations on States and registered owners:

- States shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck.
- The registered owner shall remove a wreck determined to constitute a hazard.

- When a wreck has been determined to constitute a hazard, the registered owner shall provide the competent authority of the Affected State with evidence of insurance or other financial security
- States must ensure that any ships registered in that State does not operate unless a State Certificate of insurance has been issued for that ship.
- States must ensure under their national law that insurance (or other security) is in force in respect of any ship over 300 gt entering or leaving a port or terminal in its territory.

6.1 Offences

In order to fulfil the obligations of the ICRW, the Government proposes the following measures:

- It is to be an offence not to report a maritime casualty resulting in a wreck (Article 5). If neither the master nor the operator of a UK ship reports, then each is to be guilty of an offence. If one has reported it, the other would commit no offence by not reporting it. The offence is to be triable either way and punishable by fine, the maximum fine on summary conviction being £50,000, or on indictment to a fine.
- It is to be an offence by the registered owner, triable either way and punishable by fine, not to remove a wreck (Article 9(2)). The fine on summary conviction being £50,000, or on indictment to a fine, as it currently is in the case of failure to comply with a direction from the Secretary of State.
- It is to be an offence not to provide the insurance evidence required by Article 9(3). If one person has provided it, that is to be sufficient. The offence is to be triable either way and punishable by fine, the maximum fine on summary conviction being £50,000, or on indictment to a fine. The same as the present arrangements for the offence of entering or leaving port without evidence of insurance under the Civil Liability Convention.
- If a ship of 300 gt and above enters or leaves (or attempts to enter or leave) a UK port or terminal and does not carry a State Certificate in respect of insurance under the ICRW, the master or the owner shall be liable:
    - On summary conviction to a fine not exceeding the statutory maximum (currently £50,000);
    - On conviction on indictment to a fine (no statutory maximum).
- If a ship of 300 gt and above fails to carry, or the Master of the Ship fails to produce a State Certificate, the Master shall be liable:
    - On summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000)
- The direction may only be given where there is a risk to safety or of pollution of the marine environment. This would be triable either way and punishable by a fine, the fine is limited on summary conviction only (i.e. in a Magistrates court) to a maximum of £50,000.

In addition, if the obligation to maintain insurance is not complied with, or a State Certificate is not carried on board a ship, then the ship can be detained. If a ship attempts to leave a port or terminal before that detention has been lifted then, under provisions already in the MSA 1995, the Master of the Ship will be liable to a fine of up to £50,000. Where a Court has ordered the owner to pay a fine and the owner has not complied then under section 285 of the MSA 1995, an order for distress can be made against the ship.

The enforcement powers proposed are to ensure compliance, but it is expected that they would rarely need to be used to ensure compliance with the terms of the ICRW, and would be sufficiently strong to ensure that non-compliance is not an attractive option. Using compliance with existing international conventions as a basis, we expect any enforcement costs to be minimal.

The Wreck Removal Bill Impact Assessment explained records showed that the MCA had not been required to instigate court proceedings for an enforceable offence under any of the existing Conventions detailed in Section 2. These Conventions carry similar enforcement measures to the ICRW and it is not expected that the levels of compliance with the ICRW will be any different. The Wreck Removal Bill Impact Assessment also explained that records showed that no UK flag vessel has been reported as being detained in a UK port for offences under these conventions and that there has only been one foreign flagged vessel detained. The vessel was detained in port for one day for a number of offences which included not having a copy of the bunkers certificate.

It is not believed that any extra members of staff will be required to carry out the requirements of the ICRW. The inspection regime will be carried out and absorbed within the existing Port inspections carried out by the MCA. The MCA and other State bodies already have teams to deal with the locating, marking and removal of wrecks and for recovery of costs. The ICRW will not add any new burdens to these teams.

6.2 Monitoring UK registered shipowner compliance

Once the ICRW is in force, it would be possible to assess if there has been full compliance by UK registered owners in respect of the insurance provisions. The number of ships of 300 gt and over registered in the UK is known and Government would be able to determine the number of applications for State Certificates. The MCA is also responsible for Flag State inspections at UK ports (see Section 8.3) and produces on its website each month all the ships that it has detained, the length and the reason for the detention.

6.3 Monitoring compliance of non-UK registered shipowners

Monitoring of other ships entering UK ports and terminals would be through the existing Port and Flag State inspections carried out by the MCA and therefore no additional cost for MCA is envisaged as a result. The MCA is obliged to inspect at least 25% of all ships that enter into UK ports to ensure that they meet the UK's national requirements for ships' certification, safety, pollution prevention and maintenance. If a ship cannot show that it has State Certification for the ICRW, the ship can be detained. The MCA produces on its website each month all the ships that it has detained, the length and the reason for the detention.

It is also possible to monitor whether any UK flagged ships are detained in any other States that are part of the Paris Port State Control Memorandum of Understanding (Paris MoU). This is an agreement between 20 maritime administrations covering the waters of European Coastal States and North Atlantic basin. Each quarter, a list of all ships that have been detained within group, and the reason why, is published on the Paris MOU website.

The Wreck Removal Bill Impact Assessment explained that, according to figures from the Paris MOU website, just two vessels have been detained in the last 24 months (as at August 2010) for offences in relation to carrying a Certificate for Bunker oil pollution damage, neither vessel was UK flagged nor were either detained in UK ports. Both vessels were detained for several other offences as well.

7. Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);

The evidence base used for the analysis of the costs and benefits of this measure in this impact assessment was largely collected in 2010 when developing the Wreck Removal Convention Bill Impact Assessment. The assumptions made in the Wreck Removal Convention Bill Impact Assessment have also been adopted in this impact assessment in the absence of new evidence. This approach has been taken on the grounds of proportionality given the low costs of this measure identified in the Wreck Removal Convention Bill Impact Assessment.

8. One In, Two Out

Option 2 is considered to be out of scope of One-In, Two-Out (OITO) as an international measure that does not go beyond the minimum requirements. Option 1 goes beyond the minimum requirements i.e. gold-plating, therefore the impacts of the additional increase in cost to business under Option 1 compared to Option 2 are considered to be in scope of OITO.

The Best estimates of the Total Net Cost to Business over the 10 year appraisal period are around £1.34 million for Option 1 (see Section 5.2.2.4) and around £0.44 million for Option 2 (see Section 5.3.1) (Price Base Year 2014, PV Base Year 2015).

In accordance with the OITO methodology, the total Equivalent Annual Net Cost to Business (EANCB) – including those impacts that are out of scope of OITO – has been estimated at around £0.12 million per

year under Option 1 and around £0.04 million per year under Option 2 using the Impact Assessment Calculator (Price Base Year 2009, PV Base Year 2010).

Therefore, the EANCB relating to the impacts of Option 1 which fall within the scope of OITO has been estimated at around £0.08 million per year using the Impact Assessment Calculator (Price Base Year 2009, PV Base Year 2010), and this policy is classified as 'IN'.

It should be noted that the EANCB relating to the impacts of Option 1 which fall within the scope of OITO is simply the difference between the estimates of the total EANCB for Option 1 and the total EANCB for Option 2 which are presented earlier in this section (i.e. around £0.12 million per year minus around £0.04 million per year).

The EACNB relating to the impacts which fall within scope of OITO is shown on both the 'Summary: Intervention and Options' Sheet and the 'Summary: Analysis & Evidence' sheet for Option 1, whereas the total EACNB for Option 2 is shown on the 'Summary: Analysis &Evidence' Sheet for Option 2.

9. Wider impacts

9.1 Equalities Impacts

No effect has been identified, positive or negative, on the outcomes for persons in relation to their age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.2 Small and Micro Business Assessment

It is not considered that the implementation of the ICRW would have a significant impact on small businesses. This is an international Convention and the only variances possible are not to implement it, to implement it with coverage only applying to the UK's Exclusive Economic Zone, or to implement it to include the 'opt-in' of extending coverage to the UK's territory or territorial seas. The liability conditions of the ICRW are applied according to the gross tonnage of the vessel; it is not possible (or fair) to provide legislation that would allow consideration to be given based on the size of the company owning the vessel.

The businesses that would be affected by the ICRW are shipowners and insurers. So whilst it is accepted that some UK shipowners may be small businesses, particularly those that operate as one-ship companies, the IGP&I Clubs (who insure around 90% of the world's ocean-going tonnage) and the UK Chamber of Shipping have stated that the majority of the UK fleet maintains compulsory insurance (where required by one of the other Conventions in force or the EU Insurance Directive).

All vessels over 300 gt would require an annual State Certificate as proof that insurance or other financial security is in place that meets the requirements of the ICRW. For UK flagged vessels, this would be issued by the MCA. The cost is not seen as placing a significant burden on small firms, nor putting them at any significant disadvantage to shipowners of vessels under 300 gt who are not required to have a certificate.

Industry feedback has been that they fully support the implementation of the ICRW including to the UK territory and territorial waters. Industry believe that legislation and regulation should be applied and be capable of being applied, to the widest extent possible by States. They are of the view that it is crucial for the efficiency of world trade that the same legislation and regulations governing matters such as navigational safety, environmental protection and liability/compensation apply to all ships engaged in international trade and that in so far as possible the same legislation applies in all jurisdictions to which a ship may trade.

Regardless of whether the UK implemented the ICRW, shipowners who operate in the waters of States who have implemented the ICRW would still be required to have the necessary insurance cover to meet the requirements of the ICRW.

9.3 Competition Assessment

The obligations under the ICRW would apply to all ships entering or leaving UK ports or terminals, not just those registered in the UK.

Maritime insurance is a specialised market; for example, the IGP&I Clubs provide liability cover for approximately 90% of the world's ocean-going tonnage. There are thirteen principal underwriting member clubs, but each is an independent, non-profit making mutual insurance association (who provide cover for its shipowner and charterer members against third party liabilities relating to the use and operation of ships).

The terms of the insurance requirements of the ICRW already match those which are in place under several other International Conventions and it does not introduce a new, more restrictive burden to the market.

There would essentially be a new compulsory insurance requirement for those vessels over 300 gt and under 1000 gt. But it is understood that the owners of UK registered ships, and foreign ships entering UK ports, should already have adequate insurance cover in place under the provisions of the EU Insurance Directive.

The implementation of the ICRW would not limit directly or indirectly the number of insurance companies or other financial institutes who could provide the insurance necessary under the terms of the ICRW, nor would the terms of the ICRW restrict the ability of those companies to remain competitive. Maritime insurance has historically been based on a policy of reinsurance to limit the risk to any one company or individual. Within the IGP&I Clubs, all claims in excess of (currently) $9 million are shared between each club member. The liability terms of the ICRW are similar to those in place under other ratified Conventions and the EU Insurance Directive and would not lead to an artificially fixing of the price of the insurance to shipowners.

Shipowners of vessels over 300 gt would be required to obtain an annual State Certificate to identify that sufficient insurance or other financial security is in place to cover their liabilities under the terms of the ICRW. The cost of the certificate for UK flagged vessels is not considered to be so great that it would place such shipowners at a disadvantage to those with a vessel that is under 300 gt and who do not require a certificate.

Vessels under 300 gt may still consider taking out insurance to cover their liabilities and it is possible that this could attract new insurance providers to the market where the liability risks are not so high.

10. Summary and preferred option with description of implementation plan.

The proposed regime intends to protect the UK from the substantial costs of shipwrecks. Currently there is no general legal requirement that a shipowner must remove a wreck or pay for its removal – so the costs of removal and clean-up are often borne by the government.

Giving the ICRW the force of law in the UK would provide a uniform legal basis to locate, mark and remove, or have removed wrecks which pose a hazard to navigation or the marine environment. In line with the polluter pays principle, it would also, by imposing liability and compulsory insurance on shipowners, ensure the Affected State can recover those costs. The preferred option includes the 'opt-in' to extent coverage to include the UK territorial sea. This is preferable because it is acknowledged that most wrecks occur within 12 nautical miles of the coastline and it would also cover incidences on UK territory.

We plan to bring the proposed regime into force on 14 April 2015, to coincide with the date the ICRW will enter into force internationally.

11. Review arrangements

It is expected that a review of the proposed regime will take place five years after they have been brought into force in the UK. This will be April 2020.

The review would need to explore whether the proposed regime (domestic legislation) implemented in respect to the ICRW remain valid, including taking account of the views of the MCA, the Lighthouse Authorities, Harbour Authorities and other key stakeholders.

Successful implementation of the proposed regime would be difficult to judge. Large scale maritime incidences are thankfully few and far between, and can only be judged on a case by case basis.

The Paris Memorandum of Understanding (MOU) covers Port State Control arrangements in Europe and the North Atlantic; that is the inspection of ships in ports to verify that the condition of the ship, its equipments and documentation complying with the requirements of international regulations and that the ship is manned and operated in compliance with these rules. The MOU and MCA produce monthly lists of all ships detained by port authorities and the reasons for the detention and would give an indication of the number of ships that do not comply with the necessary insurance requirements of the ICRW.

The recovery of costs possible under the terms of the ICRW will be monitored on a case by case basis as no formal system is in place. Regular meetings with the Counter Pollution and Salvage Team in the MCA would allow an opinion to be formed on how the Convention is working in practice. Ad-hoc meetings with other key stakeholders would ensure that the Department is able to form a judgement taking into account both Government and industry opinions.

Exclusive Economic Zone (EEZ)

The UK's EEZ was adopted back in March 2014. An EEZ is a zone that generally extends up to 200 nautical miles from a State's territorial sea and which that State has control of all economic resources within this area, including fishing, mining, oil exploration, and any pollution of those resources. Where such a zone would enter into another State's waters then all affected States would negotiate the limits. Under the terms of the ICRW, if a State does not have an EEZ they may determine the area to which the ICRW will apply but which can be no more than 200 nautical miles beyond the boundaries of the territorial seas.

Hazard

Under the terms of the ICRW a hazard means any condition or threat that;

- Poses a danger or impediment to navigation
- 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.

International Maritime Organisation (IMO)

The IMO is a specialised agency of the United Nations with 169 Member States and three Associate Members. The IMO's primary purpose is to develop and maintain a comprehensive regulatory framework for shipping covering safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. The work of IMO is conducted through five committees and these are supported by technical subcommittees.

Marine Guidance Note (MGN) 135(M)

Issued in March 2000, the MGN contains the IMO guidelines on shipowners' responsibility in respect of maritime claims. The IMO Assembly adopted those guidelines in November 1999 (resolution A.898 (21)). They recommend that shipowners have effective cover for their liabilities to third parties – in the form of insurance or another form of financial security – and carry a certificate on board to prove this.

Maritime Casualty

Under the terms of the ICRW, this 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.

Nautical Mile

A unit of measure equivalent to 1,852 metres (a statute mile used for UK land measurement is 1760 yards or approximately 1,609 metres)

Organisation for Economic Co-operation and Development (OECD)

The mission of the Organisation for Economic Co-operation and Development (OECD) is to promote policies that will improve the economic and social well-being of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems.

Special Drawing Right (SDR)

The SDR is an artificial currency unit created by the International Monetary Fund (IMF) in 1969. The nominal value of an SDR is derived from a basket of currencies; specifically, a fixed amount of US Dollars, Japanese Yen, Pounds Sterling and Euro. Several international maritime liability treaties use the SDR as a unit of currency to value penalties, charges or prices.

Territorial Seas

The sea zone that lies adjacent to, and is measured from, the coastal state's mean low tide mark. Has a maximum width of 12 nautical miles. The coastal state exercises sovereign jurisdiction, subject to the right of innocent passage of vessels on the surface and the right of transit passage in, under, and over international straits.

Territory

Any land above the mean low tide mark.

United Nations Convention on the Law of the Sea 1982 (UNCLOS)

The United Nations Convention on the Law of the Sea lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources. It enshrines the notion that all problems of ocean space are closely interrelated and need to be addressed as a whole.

The full text of the Convention can be found at –

http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm

Wreck

Under the terms of the ICRW, following a maritime casualty (see definition above) means:

- A sunken or stranded ship; or
- Any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or
- Any object that is lost at sea from a ship that is stranded, sunken or adrift at sea; or
- 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 taken.

ICRW

The Nairobi International Convention for the Removal of Wrecks (2007)

LLMC

The International Convention on Limitation of Liability for Maritime Claims (1976)

EU Insurance Directive

Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims.