



WRECKS

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Every Skipper obviously dreads losing a vessel and it appears that there may now be additional financial reasons to avoiding such a prospect. Losses and financial exposure may go beyond loss of the vessel and cargo and the initial clean-up costs to on-going financial exposure to the local Regional Council.

Formerly a Government official (the Receiver of Wrecks) was appointed to look after wrecks. However, since amendments to the Maritime Transport Act in 1999 the office of the Receiver of Wrecks has been disestablished. The MSA has indicated that it can step in as a defacto Receiver of Wrecks (for example in salvage situations), albeit somewhat reluctantly. However it appears the MSA has little interest in wrecks, beyond establishing that they are not a navigation hazard and are not a major environmental risk. Once the MSA establishes that the vessel is not a navigation hazard and not an environmental hazard (usually after removal of fuel and lubricants), then as far as the MSA is concerned the wreck can be left to grow barnacles in peace.

However, regional authorities may take a more active interest in the wreck and this interest may end up costing the owner (or the insurer) significant amounts of money on an on-going basis. By amendments to the Local Government Act in April 1999 it was expressly made a function and duty of regional Councils to regulate and control navigation safety. Regional Councils are empowered to remove obstructions and impediments to navigation. Regional officers such as Harbour Masters or Enforcement Officers may give directions regulating the removal of vessels within the regional

Council's waters. A Regional Council's powers and duties relating to removal of wrecks are now set out in s650K of the Local Government Act. Under this section if a wreck on or in any land or waters within the Regional Council's jurisdiction is a hazard to navigation, the Council may take steps to remove and deal with the wreck. The first step would be for the Council to make a written request of the owner to either remove the wreck within a certain time, and in a certain manner, or to provide a security covering the cost of removing the wreck. If the owner cannot be found, or fails to remove the wreck within a certain time, the Council may remove the wreck and can recover the costs of removal from the owner. For the purpose of removal the Council may destroy the wreck, or any part of it, and if it recovers any parts can sell those parts to cover the cost of removal.

None of the regional Council's powers to remove wrecks limits the MSA's power under the Marine Transport Act to remove hazardous navigation, including the removal of wrecks.

There is no doubt that vessel owners are responsible for the costs of removing a wreck if it presents a navigation hazard and for the costs of removing potential pollutants or remedying any pollution that follows from the loss of a vessel. However, the owner's responsibilities may extend beyond these two scenarios under the Resource Management Act. At least one regional authority, Environment Southland, has published a proposed Regional Coastal Plan requiring owners of wrecks to apply for a resource consent

allowing them to leave the vessel where it sank.

Environment Southland notes that not only can a sunken or grounded vessel endanger shipping, it can also detract from visual amenities and/or interfere with activities in the coastal marine area. In an effort to ensure that the owners of sunken grounded or abandoned vessels take all steps to mitigate these possible effects, the Council requires that the owners obtain a resource consent to allow the vessel to remain where it is. It considers that leaving a vessel on the bed of the coastal marine area is an "occupation" in terms of the Resource Management Act and it is inappropriate to allow sunken or grounded vessels to remain where they are as of right. Occupation of the seabed by a sunken vessel is deemed to be a discretionary activity. If the proposed plan is accepted then the owners of any vessels lost in the Southland area will be required to apply for a resource consent and will need to abide by any conditions attached to that consent. It has been foreshadowed that those conditions may include imposing on-going monitoring costs on the vessel

owner. Any conditions imposed would need to be reasonable in all the circumstances.

Environment Southland has expressly dealt with the issue in its Proposed Plan by deeming the leaving of sunken vessels to be a discretionary activity and some vessel owners may be upset by the inclusion of this reference in the Regional Plan. However, even if other Regional authorities do not deal expressly with the issue in their coastal plans, the terms of the Resource Management Act may require that a resource consent be obtained in any event.

The requirement to obtain a resource consent where there are no issues of danger to navigation or pollution, and the conditions that could or should be attached to such consents raises several interesting legal issues that may well be contested in the future. In the interim vessel owners should discuss with their insurers coverage for the potential on-going costs of a wreck. The potential costs are also another reason for adopting a single ship company structure.