

WRECK AND SALVAGE ACT 2004

[ASSENTED TO 13 JULY 2004] [DATE OF COMMENCEMENT: 1
NOVEMBER 2004]

(Signed by the President)

ACT

To provide for the salvage of ships, aircraft and life and the protection of the marine environment; to provide for the amendment or repeal of certain provisions of the Merchant Shipping Act, 1951; and to provide for matters connected therewith.

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1 Definitions

In this Act, unless the context indicates otherwise-

"damage to the environment" means substantial or significant physical damage to human health or to marine life or resources in-

- (a) coastal or inland waters or areas adjacent thereto; or
- (b) any other place where such damage may occur, caused by pollution, contamination, fire, explosion or similar major incidents;

"master", in relation to a ship, means any person, other than a pilot, having charge or command of the ship;

"Minister" means the Minister responsible for transport;

"Namibian ship" means a ship registered in Namibia in terms of the Merchant Shipping Act, 1951 (Act 57 of 1951), or deemed to be so registered;

"owner of a ship" means any person to whom a ship or a share in a ship belongs;

"payment" means any salvage, reward, remuneration or compensation due and payable under this Act;

"port", in relation to-

- (a) a port in a country other than Namibia, means a place, whether proclaimed a public harbour or not, and whether natural or artificial, to which ships may resort for shelter or to load or discharge goods or persons; or
- (b) a port in Namibia, means the Walvis Bay port or the Lüderitz port as described in Schedule 1 to the Namibian Ports Authority Act, 1994 (Act 2 of 1994);

"prescribe" means prescribe by regulation under section 36;

"property" means any property not permanently and intentionally attached to the shoreline, and includes freight at risk;

"public authority" includes the Namibian Ports Authority established in terms of section 2 of the Namibian Ports Authority Act, 1994 (Act 2 of 1994);

"salvage claim" means-

- (a) any claim for, arising out of or relating to salvage, including salvage relating to any aircraft and the sharing or apportionment of salvage and any right in respect of property salvaged or which would, but for the negligence or default of the salvor or a person who attempted to salvage it, have been salvaged; or
- (b) any claim arising out of this Act;

"salvage officer" means a salvage officer appointed under section 10;

"salvage operation" means any act or activity undertaken to assist a ship or any other property in danger in navigable or any other waters;

"salvor" means any person undertaking a salvage operation;

"seaman" means any person, except a master or a pilot, employed or engaged in any capacity on a ship;

"ship" means any vessel used or capable of being used on any waters, and includes-

- (a) any hovercraft, power boat, yacht, fishing boat, submarine vessel, barge, crane barge, crane, dock, oil or other rig, mooring installation or similar installation, whether floating or fixed to the sea-bed and whether self-propelled or not; and
- (b) any fixed or floating platform or any mobile offshore drilling unit, whether or not it is engaged in the exploration, exploitation or production of sea-bed mineral resources;

"state owner", in relation to non-commercial cargo, means such cargo as is owned by any state;

"this Act" includes any regulation made under section 36;

"wreck" includes any flotsam, jetsam, lagan or derelict, any portion of a ship or aircraft lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of any such ship or aircraft and any portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress.

2 Application of Act

(1) This Act applies whenever judicial or arbitral proceedings relating to matters dealt with in this Act are brought in Namibia.

(2) This Act does not affect any rights or liabilities arising out of any salvage operations or other acts related thereto which started before the commencement of this Act.

(3) Without prejudice to subsection (4), this Act does not apply to warships or other non-commercial ships owned or operated by a state and entitled, at the time of a salvage operation, to sovereign immunity under generally recognised principles of international law, unless that state decides otherwise.

(4) This Act also applies to salvage operations by or under the control of a public authority, and a public authority carrying out or causing to be carried out such salvage operations is, notwithstanding anything to contrary in the Namibian Ports Authority Act, 1994 (Act 2 of 1994), or any other law contained, entitled to avail itself of the rights and remedies provided for in this Act in respect of salvage operations.

3 Application to aircraft

The provisions of this Act relating to wreck and to salvage of life or property and to the duty to render assistance to ships in distress apply to aircraft as they apply to ships, and the owner of an aircraft is-

- (a) entitled to the award of an amount for salvage services rendered by the aircraft; and
- (b) liable to pay an amount of salvage in respect of services rendered in saving life from the aircraft or in saving the aircraft or any wreck from the aircraft, in any case where the owner of the aircraft would have been so entitled or liable had it been a ship.

4 Jurisdiction of High Court in actions for salvage

(1) The High Court of Namibia has jurisdiction to hear and determine any salvage claim-

- (a) in the case of a ship or an aircraft registered in Namibia or wreck which formed part of or was on board a ship or aircraft so registered when it was lost, abandoned, stranded or in distress, if the services in respect of which salvage is claimed were rendered or the wreck

forming the subject of the claim was found outside Namibia and the territorial waters of Namibia; or

- (b) in the case of any ship or aircraft or wreck whatsoever, if the services in respect of which salvage is claimed were rendered or the wreck forming the subject of the claim or a part thereof was found or was brought within the area of jurisdiction of the High Court or within the territorial waters of Namibia bordering that area of jurisdiction.

(2) Subsection (1) does not deprive the High Court of any jurisdiction which may be vested in it by virtue of any other law.

5 Court trying salvage claim may be assisted by assessors

(1) The court in which proceedings for a salvage claim have been instituted may, in its discretion, appoint one or more assessors acting only in an advisory capacity, and those assessors must be impartial persons who are conversant with maritime affairs.

(2) An assessor (not being a person in the employment of the State) appointed under subsection (1) must be paid such remuneration and allowances as the Minister with the concurrence of the Minister responsible for finance may determine.

6 Court may order payment in foreign currency

The court hearing a salvage claim may, subject to any law relating to exchange control, order payment in respect of such claim to be made in such currency other than the currency of Namibia as in the circumstances of the case appears appropriate, and make such order as seems just as to the date upon which the calculation of the conversion from any currency to any other currency should be based.

7 Obligation to assist ships in distress

(1) The master of a Namibian ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, must proceed with all speed to the assistance of the persons in distress, informing them if possible that he or she is doing so, unless he or she-

- (a) is unable, or in the special circumstances of the case considers it unreasonable or unnecessary or impracticable, to do so; or
- (b) is released in terms of subsection (3) or (4) from the obligation imposed by this subsection.

(2) Where the master of any ship in distress has requisitioned any Namibian ship that has answered his or her call for assistance, it is the duty of the master of the Namibian ship to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress, unless he or she is released under subsection (4) from the obligation imposed by this subsection.

(3) A master is released from the obligation imposed by subsection (1) as soon as he or she is informed of the requisition of one or more ships other than his or her own and that the requisition is being complied with by the ship or ships requisitioned.

(4) A master is released from the obligation imposed by subsection (1) and, if his or her ship has been requisitioned, from the obligation imposed by subsection (2), if he or she is informed by the persons in distress, or by the master of any ship that has reached the persons in distress, that assistance is no longer required.

(5) If the master of a Namibian ship, on receiving at sea a signal of distress or information from any source that a ship is in distress, is unable, or in the special circumstances of the case considers it unreasonable or unnecessary or impracticable, to go to the assistance of the persons in distress, he or she must promptly enter in the

official logbook a statement of his or her reasons for not going to the assistance of those persons.

(6) Compliance by the master of a ship with this section does not affect his or her right, or the right of any other person, to salvage.

(7) In the application of this section, any reference to a ship in distress is to be construed as including a reference to-

- (a) a ship that is in distress because of distress to the crew of that ship;
- (b) an aircraft or a survival craft from a ship or an aircraft in distress.

8 Duty to render assistance to persons in danger at sea

(1) The master of a ship must, in so far as he or she can do so without serious danger to his or her ship or to any person on the ship, render assistance to every person who is found at sea in danger of being lost, even if that person is a citizen of a country at war with Namibia or with the country in which the ship is registered.

(2) Compliance by the master of a ship with subsection (1) does not affect his or her right, or the right of any other person, to salvage.

(3) This section applies to all ships, wherever they may be registered.

9 Duty of masters of ships in collision to render assistance

(1) In every case of a collision between two or more ships, it is the duty of the master of each ship, if and in so far as he or she can do so without danger to any person on the ship-

- (a) to render to the other ship and every person thereon such assistance as may be practicable and necessary to save them from any danger caused by the collision and to stay by the other ship until he or she has ascertained that there is no need for further assistance; and
- (b) to give to the master of the other ship, the name of his or her ship and of the country in which it is registered and the name of the port from which it has come and to which it is bound.

(2) Compliance by the master of a ship with subsection (1) does not affect his or her right, or the right of any other person, to salvage.

(3) This section applies to all ships, wherever they may be registered.

10 Salvage officers

(1) The Minister may appoint suitably qualified persons to be salvage officers at ports or other places in Namibia in respect of any defined area.

(2) Salvage officers are appointed for such period and under such conditions as the Minister may consider fit.

(3) The powers, duties and functions of salvage officers appointed under this section are as prescribed.

11 Remuneration and expenses payable to salvage officers

Any person appointed under section 10 as a salvage officer and who is not in the employment of the State-

- (a) must be paid such remuneration as the Minister with the concurrence of the Minister responsible for finance may determine; and
- (b) is entitled to reimbursement of subsistence and transport expenses actually and necessarily incurred in the performance of his or her functions under this Act.

12 Exercise of powers in absence of salvage officer

(1) If a salvage officer or his or her authorised representative is not present-

- (a) a suitably qualified member of the Namibian Police Force; or
- (b) in the absence of a member referred to in paragraph (a), a suitably qualified commissioned officer in the Namibian Defence Force,

may do anything he or she is authorised to do by the salvage officer.

(2) Any person acting for a salvage officer under subsection (1) is in respect of any wreck considered to be the agent of the salvage officer and must comply with the provisions of section 122(2) of the Customs and Excise Act, 1998 (Act 20 of 1998), but is not deprived, by reason of his or her so acting, of any right to salvage to which he or she would otherwise be entitled.

(3) Any salvage officer or any person acting for a salvage officer may not interfere with the lawful performance of a salvage service by a salvor.

13 Investigation concerning ships wrecked, stranded or in distress

If a ship is wrecked, stranded or in distress, a salvage officer or person authorised by him or her, may conduct an investigation into any or all of the following matters:

- (a) The name and description of the ship and its registration;
- (b) the names of the master and of the owners;
- (c) the names of the owners of the cargo;
- (d) the port from and to which the ship was bound;
- (e) the cause of the wrecking, stranding or distress of the ship;
- (f) the services rendered;
- (g) such other relevant matters or circumstances as he or she considers fit.

14 Power to pass over adjoining land

(1) When a ship is wrecked, stranded or in distress, all persons may, for the purpose of rendering assistance to the ship or of saving the lives of any shipwrecked persons or of saving any wreck, unless there is some public road or camping site equally convenient, pass and repass either with or without vehicles or animals over any land and camp on the land, without being subject to interruption by the owner or occupier thereof, if they do so with as little damage as possible, and may also, on the same condition, deposit on that land any goods required for the construction of a camp and their stay thereat, and any wreck recovered from the ship.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights granted by subsection (1) is a charge on the ship or wreck in respect of or by which the damage is caused.

(3) The amount payable in respect of the damage referred to in subsection (2) must, in the event of a dispute, be determined in the same manner as salvage is determined in terms of this Act, and is, in default of payment, recoverable in the same manner as salvage is recoverable under this Act.

15 Power of salvage officer to suppress plunder and disorder

No person may, when a ship is wrecked, stranded or in distress, plunder, create disorder or obstruct the preservation of the ship or shipwrecked persons or of the wreck, and the salvage officer or his or her authorised representative may cause any person contravening this section to be detained.

16 Interfering with wrecked ship or aircraft

(1) No unauthorised person may board any ship or aircraft wrecked, stranded or in distress without the leave of the person in charge of such ship or aircraft, and any person boarding such ship or aircraft without permission may be repelled by reasonable force.

(2) No person may-

- (a) impede or hinder the saving of any ship stranded or in danger of being stranded, or otherwise in distress, or of any life from any such ship, or of any wreck;
- (b) secrete any wreck, or deface or obliterate any marks thereon; or
- (c) wrongfully carry away or remove any wreck.

17 Salvage contracts

(1) The master of a ship may conclude contracts for salvage operations on behalf of the owner of the ship, and the master or the owner of the ship may conclude such contracts on behalf of the owner of any property on board the ship.

(2) Notwithstanding subsection (1), a salvage contract or any terms thereof may be annulled or modified by a competent court if-

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree to large or to small for the salvage services actually rendered.

18 Duties of salvors and of owners and masters of ships

(1) In carrying out any salvage operation in respect of a ship or other property in danger, the salvor must-

- (a) carry out the salvage operation with proper care;
- (b) in performing the duty in terms of paragraph (a), exercise proper care to prevent or minimise damage to the environment;
- (c) whenever circumstances reasonably require, seek assistance from other salvors; and
- (d) accept the intervention of other salvors when reasonably requested to do so by the owner or master of the ship or other property in danger, but the amount of the salvor's reward may not be prejudiced should it be found that such a request was unreasonable.

(2) The owner and master of a ship, or the owner of other property, in danger must-

- (a) cooperate fully with the salvor during the course of any salvage operation;
- (b) in performing the duty in terms of paragraph (a), exercise proper care to prevent or minimise damage to the environment; and
- (c) when that ship or other property has been brought to a place of safety, accept redelivery thereof when reasonably requested by the salvor to do so.

19 Conditions for reward

(1) A salvage operation which has had a useful result entitles the salvor concerned to a reward fixed in accordance with section 20.

(2) Except as otherwise provided in this Act, no reward is payable under this Act if a salvage operation has had no useful result.

(3) This section applies despite that the salvaged ship and the ship undertaking the salvage operation belong to the same owner.

(4) In this section "useful result", in relation to a salvage operation, means a salvage operation that made a meritorious contribution towards the ultimate success in salvaging a ship or other property in danger.

20 Criteria for fixing reward for salvage operations

(1) The reward for a salvage operation must, subject to subsection (2), be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are set out below:

- (a) The salvaged value of the ship and other property;
- (b) the skill and efforts of the salvor in preventing or minimising damage to the environment;
- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvor in salvaging the ship, other property and life;
- (f) the time used and expenses and losses incurred by the salvor;
- (g) the risk of liability and other risks run by the salvor or his or her equipment;
- (h) the promptness of the salvage services rendered;
- (i) the availability and use of ships or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

(2) No reward, exclusive of any interest and recoverable legal costs that may be payable thereon, may exceed the salvaged value of the ship and other property in question.

(3) Payment of a reward fixed in accordance with subsection (1) must be made by all of the ship and other property interests in proportion to their respective salvaged values.

21 Special compensation payable to salvors

(1) If a salvor has carried out a salvage operation in respect of a ship which by itself or its cargo threatened damage to the environment and has failed to earn a reward under section 20 at least equivalent to the special compensation assessable in accordance with this section, he or she is entitled to special compensation from the owner of that ship equivalent to the expenses incurred by him or her (hereinafter in this section referred to as salvor's expenses).

(2) If, in the circumstances contemplated in subsection (1), a salvor by his or her salvage operation has prevented or minimised damage to the environment, the special compensation payable by the owner of the ship in question to the salvor under that subsection may-

- (a) be increased up to a maximum of 30 percent of the salvor's expenses; and
- (b) on application to a competent court, be further increased, if the court considers it fair and just to do so and bearing in mind the relevant criteria set out in section 20(1), but in no event may the total increase be more than 100 percent of the salvor's expenses.

- (3) The total special compensation under this section is payable only if and to the extent that such compensation is greater than any reward recoverable by a salvor under section 20.
- (4) If a salvor has been negligent in the carrying out of a salvage operation and has in consequence thereof failed to prevent or minimise damage to the environment, he or she may be deprived of the whole or part of any special compensation due to him or her under this section.
- (5) In fixing a reward under section 20 and assessing special compensation under this section, it is not required that such a reward be fixed up to the maximum salved value of the ship and other property in question before assessing the special compensation payable under this section.
- (6) Nothing in this section contained is to be construed as affecting any right of recourse on the part of the owner of a ship.
- (7) In this section-
- "salvor's expenses" means the out-of-pocket expenses reasonably incurred by a salvor in any salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in section 20(1)(h), (i) and (j);
- "fair rate" means a rate of remuneration which is fair having regard to the scope of the work and to the prevailing market rate, if any, for work of a similar nature.

22 Salvage payable for saving life

- (1) When services are rendered in saving life from any ship, salvage is payable to the salvor by the owner of the ship or the owner of any wreck, whether or not the ship or wreck has been saved and notwithstanding section 19(1).
- (2) No salvage is payable by any person in respect of the saving of his or her life from any ship.
- (3) Notwithstanding anything to the contrary in any other law contained, the payment of salvage in respect of the preservation of life has priority over all other claims for salvage.
- (4) When a ship or wreck is lost or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, the Minister may, in his or her discretion, award to the salvor, out of moneys made available by Parliament for that purpose, such amount as he or she considers fit, in whole or part satisfaction of any amount of salvage so left unpaid.
- (5) When an award is made under subsection (4), the Minister may recover the amount of such award from the owner of the ship or wreck from which life was saved.

23 Salvage payable by Controller of Customs and Excise

When a ship is wrecked, stranded, abandoned or in distress or any wreck is found and services are rendered in saving such ship or wreck, salvage must, subject to section 22(3), be paid to the person who rendered the services by the Controller of Customs and Excise if the ship or wreck is disposed of by him or her in terms of section 122(3) of the Customs and Excise Act, 1998 (Act 20 of 1998).

24 Apportionment between salvors and owners and masters of ships

- (1) The apportionment of a reward under section 20 between salvors must be made on the basis of the criteria contained in that section.

(2) The apportionment of a reward referred to in subsection (1) between the owner, master and other persons in the service of each salving ship must be determined by the law of the flag of that ship or, if the salvage has not been carried out from a ship, by the law governing the contract between the salvor and his or her employees.

25 Effect of salvor's misconduct

A salvor may be deprived of the whole or part of any payment due to him or her under this Act to the extent that the salvage operation in question has become necessary or more difficult because of fault or neglect on his or her part or if the salvor has been guilty of fraud or other dishonest conduct.

26 Salvage services rendered under existing contracts

No payment is due under this Act unless the salvage services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

27 Prohibition of salvage operations

Salvage services rendered, notwithstanding the express and reasonable prohibition of the owner or master of a ship in danger or the owner of any other property in danger which is not and has not been on board the ship, does not give rise to any payment under this Act.

28 Detention of ship or wreck until salvage is paid

(1) If a salvage officer is satisfied that salvage is due to any person under this Act, he or she must detain the ship or wreck saved or assisted or from which life was saved until payment is made for the salvage due, or until process for the arrest or detention of such ship or wreck by a competent court is served.

(2) A salvage officer may release any ship or wreck detained by him or her in terms of subsection (1) if security to his or her satisfaction is given for the payment of the salvage due.

29 Security for salvage

(1) Upon the request of a salvor, a person liable for a payment due under this Act must give satisfactory security for the payment of the salvor's claim, including interest and costs of the salvor.

(2) Without prejudice to subsection (1), the owner of a salvaged ship must do his or her utmost to ensure that the owners of the cargo of that ship give satisfactory security for the payment of the salvor's claims against them, including interest and costs of the salvor, before the cargo is released.

(3) The salvaged ship and other property may not, without the consent of the salvor who carried out the salvage operation, be removed from the port or place at which they first arrived after the completion of the salvage operation until satisfactory security has been given for the payment of the salvor's claim against the ship or property in question.

30 Maritime lien

(1) A salvor who has a claim for a payment due under this Act is, subject to subsection (2), entitled to enforce a maritime lien in respect of that claim.

(2) A salvor may not enforce a maritime lien when security to his or her satisfaction is given for the payment of the claim in question, including interest and costs.

31 Interim payment

(1) The court having jurisdiction over the claim of a salvor may, by interim decision, order the salvor be paid on a such amount as it considers fair and just, and on such terms, including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.

(2) In the event of an interim payment under subsection (1), the security given in terms of section 29 must be reduced accordingly.

32 Limitation of actions

(1) Notwithstanding anything to the contrary in any other law contained, any action relating to payment under this Act is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years, which limitation period begins to run on the date on which the salvage operation in question is terminated.

(2) A person against whom any claim contemplated in subsection (1) is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant, and such period may in like manner be further extended.

33 Powers of Minister in respect of certain wrecks and ships

(1)(a) When a ship is wrecked, stranded or in distress, the Minister or any other person authorised thereto in writing by the Minister (hereinafter in this section referred to as his or her authorised representative) may direct the master or owner of such ship, or both such master and such owner, either orally or in writing, to move such ship to a place specified by the Minister or his or her authorised representative or to perform such other acts in respect of such ship as may be specified by the Minister or his or her authorised representative.

(b) If the master or owner of a ship referred to in paragraph (a) fails to perform, within the time specified by the Minister or his or her authorised representative, any act which he or she has in terms of that paragraph been required to perform, the Minister or his or her authorised representative may cause such act to be performed by any other person.

(2) The Minister or his or her authorised representative may, notwithstanding subsection (1) but subject to section 15(1)(d) and (g) of the Namibian Ports Authority Act, 1994 (Act 2 of 1994), cause any wreck or any wrecked, stranded or abandoned ship or any part thereof to be raised, removed or destroyed or dealt with in such other manner as he or she may consider fit, if he or she has not been able to contact the master or the owner of that wreck or ship, or part thereof.

(3) If the Minister or his or her authorised representative incurs any expenses in connection with the exercise of any power under subsection (1)(b) or (2), he or she may recover such expenses from the owner of the wreck or ship in question or, in the case of an abandoned wreck or ship, from the person who was the owner thereof at the time of the abandonment.

(4) If the Minister or his or her authorised representative incurred or will incur any expenses in connection with the exercise of any power under subsection (1)(b) or (2) in respect of any wreck or ship, he or she may cause any goods to be removed from the wreck or ship.

(5) The Minister or his or her authorised representative may-

(a) sell any wreck or ship in respect of which any power has been exercised under subsection (1)(b) or (2), any part of such wreck or ship and any goods removed

therefrom under subsection (4), and apply the proceeds of the sale towards the defrayal of any expenses incurred in connection with the exercise of such power; or
(b) cause any wreck, ship or goods referred to in paragraph (a) to be detained until security to his or her satisfaction has been given for the payment of the expenses referred to in that paragraph.

(6) If any wreck, ship or goods are sold under subsection (5) and the proceeds of the sale exceed the amount of the expenses referred to in that subsection, the surplus must be paid to the owner of the wreck, ship or goods in question after deducting therefrom the amount of any duty payable in respect of such wreck, ship or goods in terms of the Customs and Excise Act, 1998 (Act 20 of 1998).

(7) The Minister or his or her authorised representative is not liable in respect of anything done in good faith in terms of this section.

34 Agreement to forfeit right to salvage is void

(1) A seaman of a Namibian ship may not by agreement abandon any right to salvage that he or she may have or obtain under this Act, and any provision in any agreement with him or her inconsistent with this section is void.

(2) Subsection (1) does not apply to any determination made by a seaman belonging to a ship engaged in salvage service regarding the remuneration to be paid to him or her for salvage services to be rendered by that ship to any other ship.

35 Restrictions on assignment of salvage

The following provisions apply to salvage due or to become due to a seaman of a Namibian ship under this Act:

- (a) Such salvage is not liable to attachment or subject to any form of execution under a judgment or order of any court;
- (b) an assignment or hypothecation thereof does not bind the person making the same;
- (c) a power of attorney or authority for the receipt thereof is not irrevocable; and
- (d) payment of salvage to a seaman is valid in law, notwithstanding any previous assignment or hypothecation of salvage, or any attachment of or execution upon that salvage.

36 Regulations

(1) The Minister may make regulations on any matter which is required or permitted to be prescribed under this Act or which may be necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

(2) A regulation made under subsection (1) may, for any contravention of or failure to comply with any provision thereof, prescribe a penalty not exceeding a fine of N\$1 000 or imprisonment for a period of three months.

37 Offences and penalties

Any person who contravenes or fails to comply with any provision of section 7(1) or (2), 8(1), 9(1), 15 or 16(1) or (2) commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

38 Declaration of wreck to be a monument

This Act does not derogate from the operation of the National Monuments Act, 1969 (Act 28 of 1969).

39 Act to bind State

This Act binds the State.

40 Interpretation of Act

(1) Nothing in this Act contained is to be construed as-

- (a) authorising-
 - (i) the seizure, arrest or detention by any legal process of, or any proceedings in rem against, non-commercial cargoes owned by a state and entitled, at the time of a salvage operation, to sovereign immunity under generally recognised principles of international law, unless the state owner consents thereto;
 - (ii) the seizure, arrest or detention of humanitarian cargoes donated by a state, if such state has agreed to pay for salvage services rendered in respect of such humanitarian cargoes;
- (b) affecting the right of Namibia to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right to give directions in relation to salvage operations.

(2) Notwithstanding anything to the contrary in any other law or the common law contained, a court of law may, in the interpretation of this Act, have regard to-

- (a) international law applicable to the salvage of ships, aircraft and life and the protection of the marine environment, including the International Convention on Salvage, 1989, and its preparatory texts;
- (b) comparable foreign case law.

41 Amendment of Act 57 of 1951

The Merchant Shipping Act, 1951 (Act 57 of 1951), is amended to the extent indicated in the third column of the Schedule.

42 Short title and commencement

This Act is called the Wreck and Salvage Act, 2004, and comes into operation on a date to be fixed by the Minister by notice in the Gazette.

Schedule

LAW AMENDED

(Section 41)

No. and year of law	Short title	Extent of amendment
Act 57 of 1951	Merchant Shipping Act, 1951	

1. The amendment of section 134-

- (a) by the substitution for subsection (1) of the following subsection:

"(1) A seaman of a Namibian ship shall not by agreement forfeit his or her lien on the ship for his or her wages, or be deprived of any remedy for the recovery of wages to which in the absence of the agreement he or she would be entitled, or abandon his or her right to wages in the case of the loss of the ship, and every stipulation in any agreement with the crew inconsistent with the provisions of this section shall be void."; and

(b) by the deletion of subsection (2).

2. The substitution for section 135 of the following section:

"135 Restrictions on assignment of wages

(1) The following provisions shall apply to wages due or to become due to a seaman or apprentice-officer of a Namibian ship:

- (a) Such wages shall not be liable to attachment or subjected to any form of execution under a judgment or order of any court;
- (b) an assignment or hypothecation thereof shall not bind the person making the same;
- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and
- (d) payment of wages to a seaman or apprentice-officer shall be valid in law, notwithstanding any previous assignment or hypothecation of those wages, or any attachment of or execution upon those wages.

(2) Nothing in this section shall affect the provisions of this Act regarding allotment notes or those of section 326 of this Act or those of sections 91 and 92 of the Income Tax Act, 1981 (Act 24 of 1981)."

3. The repeal of sections 234, 258, 293 to 306, inclusive, 330 and 331.

4. The amendment of section 344 by the substitution for subsection (1) of the following subsection:

"(1) The period of extinctive prescription in respect of legal proceedings to enforce any claim or lien against a ship or its owners in respect of any damage to or loss of another ship, its cargo or freight, or any goods on board such other ship, or damage for loss of life or personal injury suffered by any person on board such other ship, caused by the fault of the former ship, whether such ship be wholly or partly at fault, shall be two years and shall begin to run on the date when the damage or loss or injury was caused."

5. The substitution for section 345 of the following section:

"345 Payment of allowances to persons appointed to make preliminary enquiries into shipping casualties, to members of courts of marine enquiry, maritime courts or courts of survey and assessors

Any person appointed under section 264, any member of a court of marine enquiry, maritime court or court of survey, any expert to whom an appeal has been referred under section 282 or any assessors summoned under section 292(2) shall, if he or she is in the employ of the

Government of Namibia, be paid such allowances towards subsistence and transport as may be prescribed (otherwise than under this Act) for Government employees of his or her class, and if he or she is not in the employ of the Government of Namibia, or if no such allowances have been prescribed for Government employees of his or her class, he or she shall be paid such allowances towards subsistence and transport as may be prescribed by the regulations made under this Act."