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## **COMPULSORY INSURANCE (THIRD PARTY LIABILITY) REQUIREMENTS FOR FISHING VESSELS:**

### **A CASE FOR THE INTRODUCTION OF COMPULSORY FISHING VESSEL INSURANCE IN THE CARIBBEAN**





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by

**Norman A. Martinez Gutierrez**

Consultant  
Malta

**Raymon van Anrooy**

Senior Fishery Officer  
Fishing Operations and Technology Branch  
FAO Fisheries and Aquaculture Department  
Rome, Italy

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## **PREPARATION OF THIS DOCUMENT**

This publication summarizes the findings of an assessment of legal frameworks in five Caribbean countries (Barbados, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Trinidad and Tobago) in terms of entry points for introducing fishing vessel insurance, which was carried out in 2019. This circular also contains an overview of international conventions governing marine insurance and examples of mandatory fishing vessel insurance legislation from selected countries. Example regulations to facilitate introduction of compulsory third party liability insurance for fishing vessels have also been developed and are presented in this circular.

The information provided in this publication was presented in draft form to a Stakeholder Meeting on Fisheries Insurance Legislative Frameworks for the Caribbean, which was held at the United Nations House in Barbados on 15 November 2019. The Stakeholder Meeting was attended by representatives of fisheries, finance and maritime authorities and the private sector from Barbados, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Trinidad and Tobago, as well as various officers and consultants from the Food and Agriculture Organization of the United Nations (FAO). This document contains in an annex a summary record of the presentations and discussions at the Stakeholder Meeting.

The activities on fisheries insurance in the Caribbean in 2019 were carried out to contribute to the achievement of Sustainable Development Goal (SDG) #1 target 1.5: “By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters”. The activities are expected to assist in mitigation of the effects of shocks among fishers and their communities, as well as to support implementation of recommendations from the 2016 FAO-World Bank Assessment of insurance needs and opportunities in the Caribbean fisheries sector.

The assessment study and Stakeholder Meeting were funded by the FAO Framework for Linking Responses to Rural Poverty and Climate Change with a focus on coastal communities, coastal areas and Small Island Developing States and the Global Environment Facility (GEF) supported FAO implemented project on Climate Change Adaptation in the Eastern Caribbean Fisheries Sector (CC4Fish). The FAO Fishing Operations and Technology Branch (FIAO), FAO Development Law Service (LEGN), and secretariat of the Western Central Atlantic Fishery Commission (WECAFC) technically supported implementation of the activities that resulted in this circular.

## **ABSTRACT**

Fishing is amongst the most dangerous occupations in the world and accidents and fatalities in small-scale fisheries are common. Many fisherfolk who get an accident during their working life, cannot work for some time or end up disabled. This creates financial and social hardship for these fishers and their families. Introduction of third party liability insurance will protect boat owners and crew of fishing vessels, reduce the vulnerability of fishers and their families to shocks caused by accidents in fishing, and will contribute to sustainable fisheries livelihoods. An estimated 3 percent of the fishing vessels operating in the Caribbean region are currently insured and less than 20 percent of the fishers have life and/or health insurance cover. Recommendations have been made by fisheries authorities in the Caribbean for introducing third-party liability insurance for commercial vessels, similarly as vehicle insurance, which is mandatory throughout the Caribbean. Fisherfolk organizations are supportive of such insurance, particularly as it will provide cover for crew of fishing vessels as well.

This circular summarizes the findings of an FAO assessment of legal frameworks in five Caribbean countries (Barbados, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Trinidad and Tobago) in terms of entry points for introducing fishing vessel insurance. It also contains an overview of international conventions governing marine insurance and examples of mandatory fishing vessel insurance legislation from selected countries. The origins of compulsory third party liability insurance in the maritime industry and its introduction in international instruments (e.g. the Bunkers Convention, the Wreck Removal Convention, and the EU Directive 2009/20/EC) are discussed. The benefits of introducing compulsory third party liability insurance for everyone involved in the fisheries industry (claimants, shipowners, and society in general) in line with those in the merchant shipping industry are presented. Model regulations to facilitate introduction of compulsory third party liability insurance for fishing vessels are provided, as well as information to support fishers' awareness raising and capacity building on this subject. This circular also contains the proceedings of a Stakeholder Meeting on Fisheries Insurance Legislative Frameworks for the Caribbean, held on 15 November 2019 in Barbados, where the assessment findings, best-practices and model regulations were presented.

This circular makes a case for introduction of compulsory third party liability insurance for fishing vessels in the Caribbean, and claims that such insurance contributes to improving the working conditions of fishers, their safety and to responsible fishing practices.

## CONTENTS

Preparation of this document .....	iii
Abstract.....	iv
Acknowledgements.....	viii
Abbreviations and acronyms .....	ix
Introduction to fisheries insurance and the need for compulsory third party liability insurance... 1	
Fisheries insurance.....	1
The need for compulsory third party liability insurance for fisheries in the Caribbean .....	2
 Part 1. An overview of international conventions governing marine insurance and examples of mandatory fishing vessel insurance legislation from selected countries .....	5
1. Introduction.....	5
1.1 Importance of marine insurance .....	5
1.2 Types of insurance.....	5
1.3 Compulsory third-party liability insurance .....	5
1.4 Third-party liability insurance in case of fishing vessels .....	10
2. Spain .....	11
2.1 Royal Legislative Decree 2/2011, of 5 September, which approves the consolidated text of the law on state ports and merchant marine.....	11
2.2 Royal Decree 1616/2011, of 14 november, which regulates the insurance of the owners of civil vessels for maritime law claims .....	12
2.3 Law 11/2008, of 3 December, on fishing in Galicia .....	12
2.4 Order dated 28 April 2011 laying down quantitative limits on third party liability insurance obtained for vessels engaged in professional fishing, shellfish and aquaculture .....	13
2.5 Order dated 16 June 2011 laying down the regulatory bases for subsidies to promote insurance coverage for fishing, shellfish and aquaculture activities.....	14
3. Malta .....	15
3.1 Merchant shipping (liability for bunker oil pollution damage) regulations 2009 (subsidiary legislation 234.46) .....	15
3.2 Merchant shipping (wreck removal convention) regulations 2015 (subsidiary legislation 234.53) .....	15
3.3 Merchant shipping (insurance for maritime claims) regulations 2012 (subsidiary legislation 234.50) .....	16
3.4 Small ships regulations 2008 (subsidiary legislation 499.52).....	16
4. Japan .....	17
4.1 Act on liability for oil pollution damage 1975 (act no. 95 of 27 december 1975) .....	17
5. Albania.....	18
5.1 Law no. 10 076 of 12 February 2009 .....	18
6. The United Kingdom of Great Britain and Northern Ireland.....	20
6.1 The merchant shipping (compulsory insurance: ships receiving trans-shipped fish) regulations 1998.....	20
6.2 Merchant shipping notice no. m.757 .....	21
6.3 Fisheries act 1981 .....	21

Part 2. Assessment of legal frameworks in the caribbean in relation to the possible introduction of a compulsory insurance (third-party liability) requirement for fishing vessels .....	23
7. Barbados.....	23
7.1. Introduction.....	23
7.2. Legislation on maritime zones .....	23
7.3. Legislation on coastal zone management.....	23
7.4. Legislation on shipping related matters .....	24
7.5. Legislation on fisheries related matters.....	26
7.6. Legislation on insurance related matters.....	27
7.7. Institutional framework.....	30
7.8. Overall assessment .....	33
8. Dominica.....	35
8.1. Introduction.....	35
8.2. Legislation on maritime zones .....	35
8.3. Legislation on shipping related matters .....	35
8.4. Legislation on fisheries related matters.....	37
8.5. Legislation on insurance related matters.....	38
8.6. Institutional framework.....	40
8.7. Overall assessment .....	43
9. Saint christopher and nevis .....	44
9.1. Introduction.....	44
9.2. Legislation on maritime zones .....	44
9.3. Legislation on shipping related matters .....	45
9.4. Legislation on fisheries related matters.....	47
9.5. Legislation on insurance related matters.....	49
9.6. Institutional framework.....	51
9.7. Overall assessment .....	54
10. Saint vincent and the grenadines.....	56
10.1. Introduction.....	56
10.2. Legislation on maritime zones .....	56
10.3. Legislation on shipping related matters .....	56
10.4. Legislation on fisheries related matters.....	59
10.5. Legislation on insurance related matters.....	61
10.6. Institutional framework.....	63
10.7. Overall assessment .....	65
11. Trinidad and tobago .....	68
11.1. Introduction.....	68
11.2. Legislation on maritime zones .....	68
11.3. Legislation on shipping related matters .....	69
11.4. Legislation on fisheries related matters.....	71
11.5. Legislation on insurance related matters.....	72
11.6. Institutional framework.....	73
11.7. Overall assessment .....	75
12. Conclusions.....	80



APPENDICES .....	81
Appendix A: Example of compulsory third party liability insurance for fishing vessels (best practice) regulations 2020 .....	81
Appendix B: Summary report of the Stakeholder Meeting on Fisheries Insurance Legislative Frameworks for the Caribbean, Barbados, 15 November 2019 .....	90
Appendix C: Information in support of awareness raising on third party liability insurance .....	100
REFERENCES .....	105

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## ABBREVIATIONS AND ACRONYMS

BARNUFO	Barbados National Union of Fisherfolk Organizations
CARICOM	Caribbean Community
CLC	International Convention for Civil Liability for Oil Pollution Damage
CNFO	Caribbean Network of Fisherfolk Organizations
COAST	Caribbean Oceans and Aquaculture Sustainability Facility
CRFM	Caribbean Regional Fisheries Mechanism
EEZ	exclusive economic zone
EU	European Union
FAOSLC	FAO Sub-regional Office for the Caribbean
FAO	Food and Agriculture Organization of the United Nations
GEF	Global Environment Facility
GT	gross tonnage
LLMC	Convention on Limitation of Liability for Maritime Claims
P&I	Protection and Indemnity
SDGs	Sustainable Development Goals
SDR	special drawing rights (IMF)
SSF	small-scale fisheries
WECAFC	Western Central Atlantic Fishery Commission



## **INTRODUCTION TO FISHERIES INSURANCE AND THE NEED FOR COMPULSORY THIRD PARTY LIABILITY INSURANCE**

### **Fisheries insurance**

Capture fishery is among the most dangerous and risky occupations in the world. The Food and Agricultural Organization of the United Nations (FAO) estimates that every year, more than 32 000 fishers worldwide die during fishing operations, and many more fishers get injured. Fishers often work long hours under harsh weather conditions, which increases the likelihood they will experience accidents or injury. Climate change has aggravated the hazardous conditions under which most fishers work, as extreme weather events continue to increase in both number and severity, and natural disasters become ever more prevalent and destructive. Fishers, their families and fishing communities therefore need special support and livelihood protection, which insurance for accidents, lives and fishing vessels can provide.

Insurance is a risk-transfer mechanism that provides financial compensation for loss or damage caused by events beyond the control of the insured, including natural and human-made disasters.

Accidents that result in capsizing, collision or sinking of vessels, fire on board, oil spills or injuries of crew are major causes of damage and losses in the fisheries sector. These accidents may not only cause damage and loss of fishing gears and vessel, but may also lead to the need to pay financial compensation to affected third parties, loss of life or disability, loss of income or employment, or destruction of the aquatic environment.

While in most developed countries fisheries insurance is widely available and accessible, and industrial fishing vessels and their crew are generally covered by insurance, this is not the case in small-scale fisheries in developing countries. Reasons given by the insurance sector for the limited insurance cover of small-scale fisheries include: their limited knowledge of fishing operations and needs, limited knowledge of demand for insurance from fishers, low profitability of fishing vessel insurance (due to high transaction costs, small premiums and high monitoring costs), lack of insurance mandates for fishing vessels, and the number of well-functioning fisherfolk cooperatives that can act as insurance agents is generally small. On the other hand, small-scale fishers' interest in insurance services is often limited because of low awareness of insurance advantages, lack of insurance providers in fishing communities, the requested insurance premiums are regarded as too high, insurance policies and claim settlement processes are neither understood nor trusted and the income from fisheries varies because of seasonality of fishing, while insurance premium payments are often not flexible.

The benefits of fisheries insurance include, amongst others, the protection against natural hazards, compensation for cases of loss or damage of crew and assets, coverage of third-party liability, increased access to credit and investment, and general support for a stable fisheries income that contributes to the coastal economy. Access to high-quality, low-cost insurance strengthens the capacity of fishers and fishing communities to adapt and thrive in the face of adverse events.

Insurance services can contribute significantly to increasing resilience of fishers and their communities. The importance of fisheries insurance was recognized already in the 1990s and The FAO Code of Conduct for Responsible Fisheries states (article 8.2.8) that "Flag States should promote access to insurance coverage by owners and charterers of fishing vessels. Owners or charterers of fishing vessels should carry sufficient insurance cover to protect the crew of such vessels and their interests, to indemnify third parties against loss or damage and to protect their own interests".

In recent years the access to insurance services is world-wide gaining attention and insurance is regarded as important for achieving the Sustainable Development Goals (SDGs), as insurance provides a safety net and prevents people to falling into poverty after shocks, provides an economic protection mechanism, sustains development efforts, protects assets, and mitigates the effects of extreme weather and climate change.

Insurance can specifically contribute to the achievement of SDG 14 “Conserve and sustainably use the oceans, seas and marine resources for sustainable development” through making fisheries safer, protecting fisheries assets and by mitigating the impacts from incidents, extreme weather and climate change on the fisheries sector.

In the international community, the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), stress the importance of insurance for small scale fisheries in article 6.4 “States should support the development of and access to other services that are appropriate for small-scale fishing communities with regard to, for example, savings, credit and insurance schemes, with special emphasis on ensuring the access of women to such services. In the

### **The need for compulsory third party liability insurance for fisheries in the Caribbean**

There are some 116 000 small-scale fishers active in the Caribbean Community (CARICOM) countries, who possess together an estimated 33 000 commercial capture fisheries vessels. The fisheries sector is characterized by small-scale fishers, with vessels often smaller than 12 meters in length and which fish generally in the territorial waters of their countries. The average annual catches per vessel are just a few tonnes of fish, but together the fishers are important for the local economies, employment and food security in the Caribbean region. The fisheries sector is a major provider of livelihoods, culture, social cohesion and export earnings for most of the Caribbean islands.

Fisheries sector stakeholder in the Caribbean called frequently, particularly after natural disasters (mainly hurricanes) for increased availability and access to insurance services. However, it was not until the discussions at a project formulation workshop of the GEF supported FAO implemented project on Climate Change Adaptation in the Eastern Caribbean Fisheries Sector (CC4Fish) project, in November 2014, that the matter got high on the political agenda in the region. In 2015 the United States of America’ Department of State supported an initiative called Caribbean Oceans and Aquaculture Sustainability Facility (COAST), which sought and found wide support in the region. In 2015-2016 a World Bank funded, FAO implemented, insurance needs assessment study was carried out among the Caribbean fisheries sector. This study received support from the Caribbean Regional Fisheries Mechanism (CRFM) and the Caribbean Network of Fisherfolk Organizations (CNFO). The findings were shared by FAO with fishers and Caribbean states in 2017 and are published in FAO Fisheries and Aquaculture Circular No. 1175 (2018).

The assessment study revealed, amongst others, that: While each of the CARICOM countries has at least one local insurer offering marine insurance, 97 percent of the fishing vessels and fishing assets were not insured. There is a clear disconnect between insurers that offer marine policies and the fishery industry; 83 percent of the fishers expressed interest to purchase insurance coverage for their vessels, if it would be affordable and suited to their needs. Only 17 percent of the fishers had health insurance and 20 percent had life insurance.

The insurance needs identified during the assessment study showed that fishers have great interest in third-party liability insurance, coverage of damage and loss of infrastructure, insurance coverage of their fishing vessels and gears, including coverage of damage and loss caused by natural calamities, and coverage of medical expenses for captain and crew in case of accidents as well as theft. Regarding insurance premiums, the study showed that on average, fishers considered 2.7 percent annually of the asset value to be insured as affordable. The fishers considered that the insurance premiums should depend on insurance policies and what they cover. Different types of vessels might qualify for

different premium levels, depending on where and how they operate, material of the hull, anticipated risks, qualification and experience of captains and other factors. It was further preferred that insurance policies should have no claim bonuses, and that premium payments should be annually or semi-annually. Group insurance schemes, common in health insurance in the Caribbean, should also be considered, particularly for members of fisherfolk organizations.

In 2017–2018 the COAST initiative was further developed by the World Bank and the Caribbean catastrophic Risk Insurance Fund (CCRIF). COAST has become a parametric insurance product, which is being initiated in some pilot countries, with a focus on pay outs after climate change events, such as storms and hurricanes. The COAST parametric risk insurance product provides coverage for losses caused by adverse weather on fisherfolk and for direct damages caused by tropical cyclones to fishing vessels, fishing equipment and fishing infrastructure. For the 2019–2020 policy year, CCRIF makes available the COAST product for the fisheries sector to two pilot countries: Grenada and Saint Lucia.

It should be noted that parametric (weather index) risk insurance is a relatively new, but innovative approach to provide insurance that pays out benefits on the basis of a predetermined index (e.g. rainfall level, wind speed) for losses resulting from weather and catastrophic events. Such parametric insurance is an important step forwards for getting insurance coverage for the Caribbean fisheries sector, but is only a partial solution for the insurance needs of small-scale fishers in the region. Parametric insurance provides fishers with coverage for a sum insured. The insurer only pays-out in the case of natural disasters and catastrophes, but not for damage or loss from accidents that can happen on a day-to-day basis. Parametric insurance thus does not protect against or manage the majority of risks that small-scale fishers have to deal with in their day to day operations. Neither does parametric insurance provide the full range of benefits, which are commonly expected of insurance services. In addition, parametric insurance does neither incentivize nor reward a responsible and sustainable conduct of fishing, fish processing and marketing operations and better preparedness for natural disasters. This is because payouts are not related to actual damage or loss suffered by the insured and to whether an insured has followed responsible and precautionary practices.

The insurance needs assessment survey demonstrated that the day-to-day fishing operations require insurance coverage. It recognized that currently only around 3 percent of the fishing vessels in the region are being insured. In the absence of insurance, accidents and disasters can lead to job and income insecurity, bankruptcy and lower access to health care for fishers and their families.

In this respect it is noteworthy that not all small-scale fishers in the Caribbean participate in or have access to government-supported social security systems. It is estimated that approximately 50 percent of the fisherfolk in Caribbean countries may lack access to social security, although there are large differences between countries in the region. In view of the limited access to social security, life and accident insurance could provide the fishers and their families with an important safety net.

While the merchant vessels and vehicles moving through the Caribbean waters and on the roads all are insured, this is not being demanded from fishing vessel owners. Consequently, when accidents happen, the crew affected, their families, and those that got confronted with other damage from these accidents, are often not receiving any support or financial compensation. The lack of insurance cover allows the ship owners to walk away in some cases, and causes their bankruptcy or financial hardship for their families in others.

Third party liability insurance, similarly as for merchant vessels and vehicles, and required under international conventions and national legislation, can when made compulsory also to the fishing sector, contribute to improving the working conditions of fishers, their safety and to responsible fishing practices. Such insurance will institute a culture of safety in the sector, as vessel owners would like to see low insurance premiums, reducing risks for the crew, and will generate more attention for the aquatic environment.

The third-party liability insurance cover may vary depending on the insurance provider. However, the typical risks that are usually covered by third-party liability insurance policies include personal injury and death claims (incl. repatriation and maintenance); liability toward passengers and their luggage; cargo loss and damage; collisions, wreck removal (required by law); pollution, loss of property on the insured vessel, damage to fixed and floating objects and towage.

Recommendations have been made by fisheries authorities in the Caribbean for introducing third party liability insurance for commercial fishing vessels, similarly as vehicle insurance, which is mandatory throughout the Caribbean. Fisherfolk organizations are generally supportive of such insurance, particularly as it will provide cover for crew of fishing vessels as well. They claim that third-party liability insurance will add only slightly to the operational costs of fishing, compared to fuel, labour, ice, bait and repair and maintenance costs.

Making third-party liability insurance mandatory within fishing license and/or fishing vessel registration processes will cover the vast majority of third-party claims, reduce significantly the vulnerability of fishers and their families to shocks caused by accidents in fishing, and will contribute to sustainable livelihoods.

A sustainable fisheries sector should not only be sustainable in environmental terms, but also in social and economic terms. Insurance, particularly third party liability insurance, can play an essential role in developing a true sustainable sector.

In view of the above, and on request of various Caribbean fisheries sector stakeholders, FAO conducted a review of Caribbean legislative frameworks in terms of entry points for introducing fishing vessel- and compulsory third party liability insurance in fisheries, an analysis of best – practices regulations for fishing insurance applied elsewhere, and prepared draft regulations in support of introduction of compulsory third-party liability insurance in small-scale fisheries in the region.

The findings of the review were presented in draft form to a Stakeholder Meeting on Fisheries Insurance Legislative Frameworks for the Caribbean, which was held at the United Nations House in Barbados on 15 November 2019. The Stakeholder Meeting was attended by representatives of fisheries, finance and maritime authorities and the private sector from Barbados, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Trinidad and Tobago, as well as various FAO officers and consultants. A summary record of the presentations and discussions at the Stakeholder Meeting is made available in Appendix B to this circular.

It is anticipated that the findings presented in this circular will support Caribbean authorities to build upon existing and introduce new insurance programmes for the fisheries sector that are in line with those already in place in other sectors (e.g. transport, maritime).



## **PART 1. AN OVERVIEW OF INTERNATIONAL CONVENTIONS GOVERNING MARINE INSURANCE AND EXAMPLES OF MANDATORY FISHING VESSEL INSURANCE LEGISLATION FROM SELECTED COUNTRIES**

### **1. INTRODUCTION**

#### **1.1 Importance of marine insurance**

Marine insurance is a significant element in the smooth development of international trade in general and maritime transport in particular. During the course of a marine adventure the shipowner may be exposed to the loss of his ship, or damages it may suffer. A shipowner may also incur liabilities to third parties for losses or damage that may occur in the course of the operation of the ship. Such situations predetermine the vitality of marine insurance. In other words, marine insurance is the means “by which those who own or are interested in or responsible for maritime property seek to protect themselves in respect of loss of or damage to it and against liabilities to other parties falling upon them arising out of their own ownership, interest or responsibility.”

#### **1.2 Types of insurance**

Marine insurance includes insurance on ships (hull), cargoes or freight. Apart from it, marine insurance may provide cover for the liabilities incurred by the vessel towards third parties in the process of operation. Moreover, there exists the notion of marine reinsurance, which redistributes the risks covered by the primary policies among one or several reinsurers.

Insurance policies on ships, cargoes and freight may be categorized in a number of ways such as “time” policies – covering the subject property for a predetermined period of time, and “voyage” policies – for one or more stipulated voyages. Apart from this, policies may be “valued” or “unvalued”, “floating” etc. These classifications heavily affect the basic types of marine insurance and the rules governing such contracts.

Another type of insurance, relatively distinct from others, is Protection and Indemnity (P&I) Insurance provided by P&I Clubs, which provides liability insurance to its member-shipowners throughout the world covering third-party liability risks. In its essence, the clubs are shipowner’s mutual assurance organizations, regulated and operating on the basis of the rules established by its own members. The funding of the clubs is performed annually through “call” forms. Due to the nature of “indemnity”, the insured party is required to settle a third-party claim as a primary condition to be reimbursed later by the club (this is governed by the maxim “pay to be paid”). The typical risks that are covered by insurance policies provided by P&I Clubs include personal injury and death claims (incl. repatriation and maintenance); liability toward passengers and their luggage; cargo loss and damage; collisions, wreck removal (required by law); pollution, loss of property on the insured vessel, damage to fixed and floating objects, towage and general average<sup>1</sup>.

#### **1.3 Compulsory third-party liability insurance**

The introduction of compulsory insurance in the name of achieving public goals consistent with the policies of States became the subject of discussion only in the twentieth century. This concept was seen before as immoral and inconsistent with the dominant principles of economic policy. The risk involved in the process of introduction of compulsory insurance was the greater propensity of insured persons to undesirable behaviour due to the view that insurance would cover potential damage in any case. This risk, however, was outweighed by the recognition that in cases where a person was found

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<sup>1</sup> General average is a principle of a maritime law whereby ship owners and those having interest in the cargo proportionately contribute toward the full reimbursement of costs for those in the venture who sustained losses or damages to the property by preventing the total loss of the vessel, crew and/or its cargo.

liable for a damage caused, absence of insurance would prevent victims of an incident from obtaining proper compensation for the damage suffered. The original skepticism towards compulsory insurance was further softened by the fact that any undesirable behaviour of the insured person would inevitably have an impact on the premium paid. Accordingly, starting from the compulsory motor vehicle insurance introduced in many States in the 1930s, the requirement was later extended to ships under modern international conventions and national legislation.

Maritime transportation in general is a high-risk business. It is in fact reasonable to say, that one of the important elements of consolidation of the maritime liability framework adopted by the International Maritime Organization (IMO) was the introduction of a compulsory insurance requirement in order to increase the effectiveness of the international maritime safety standards. Initially, the need to ensure prompt and adequate compensation was reactionary (i.e., as a response to environmental disasters occurring due to the operation of the ships). This was faced, for example, with the vast amount of oil spilt in the sea by the grounding of the *Torrey Canyon* (1967), which in terms of the size and effect, is considered one of the most significant oil spill disasters in modern history. This incident led to the adoption of a number of international conventions including the International Convention for Civil Liability for Oil Pollution Damage (CLC, 1969, renewed 1992). This Convention aimed to provide a modern system with an adequate compensatory regime that would allow victims of pollution damage to obtain redress. Whilst specifically addressing tankers, this Convention established two main elements which have impacted the development of modern liability conventions. The first was to move away from fault-based liability and the recognition of strict liability (he who reaps the benefits must bear the risks of the activity). The second, which has a direct impact on this Report, was the introduction of compulsory insurance which allows claimants to obtain prompt and effective compensation even in cases of the shipowner's impecuniosity caused by the loss of his ship. The CLC, including these two elements, has served as a model for new liability conventions and national legislation in different areas of international maritime law.

Accordingly, the concept was incorporated in other international conventions, including the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention), the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 (Athens Convention 2002), the Nairobi International Convention on the Removal of Wrecks 2007 (Wreck Removal Convention), as well as in other international instruments such as the Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the Insurance of Shipowners for Maritime Claims (Directive 2009/20/EC).

Financial security arrangements are private in nature, but they are perceived by the IMO not only as commercial tools, but also as elements of strengthening the maritime safety system. The imposition of compulsory insurance can also contribute to higher standards on board. This is due to the fact that the inherent risks of a particular ship will be reflected in the insurance premiums (the greater expected loss in the view of the insurer, the higher will be the insurance premiums). In fact, ill-maintained vessels may not only face increased premiums, but may also become commercially uninsurable.

Another reasoning behind the introduction of the compulsory insurance was the fear that, without it, claimants may not be able to obtain compensation due to them as a result of the maritime incident. This would be the case, for example, where the vessel is lost and the shipowner is unknown or does not come forward to defend himself. In these circumstances, who could claimants look to in order to satisfy their claims? This problem was overcome by the introduction of the right of "direct action" against the insurer as a corollary measure to the regime of compulsory insurance. Consequently, the unavailability or remoteness of the shipowner is no longer an issue in the process of obtaining the compensation as long as the insurer is known.

The exercise of the right of direct action has proved to be valuable in solving the accessibility issue as it is much easier to claim from the insurer than trying to figure out who is the beneficial owner of the vessel causing the damage and pursuing a claim against him. Moreover, it is also believed that insurers

and financial security providers generally will require higher standards on board (for the purposes of keeping their costs and risks at a minimum level). Although the primary role of compulsory insurance was to assure that a shipowner bears the burden of liability, the compulsory insurance has also had a preventive effect.

### 1.3.1 The Bunkers Convention

Whilst a thorough analysis of the Bunkers Convention is not necessary, a few of its provisions are relevant to this Report. Under the Bunkers Convention, bunker oil pollution is defined as “loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship” and “the costs of preventive measures and further loss or damage caused by preventive measures”(Article 1(9)). This describes the type of loss covered by the Convention.

A ship is defined (Article 1(1)) as “any seagoing vessel and seaborne craft, *of any type whatsoever*”. While warships, naval auxiliary or other ships owned or operated by the State (provided they are being used on non-commercial service) are excluded from the Convention, fishing vessels would fall within the Convention’s definition of ship and are therefore subject to its provisions.

The Convention provides the basis of the shipowner’s liability (Article 3) for bunker oil pollution damage in the geographical area where it applies (Article 2). Furthermore, unlike the CLC, the Bunkers Convention does not provide its own limitation of liability regime (Article 6) and it would therefore be up to State Parties to look into their national legislation to see if this right exists.

Perhaps the most important point to mention is that the Bunkers Convention imposes an obligation on the owner of a ship with a gross tonnage of more than 1 000 tonnes of obtaining insurance or other financial security to cover his liability under the Convention (Article 7). The insurance or financial security required to cover the owner’s liability shall be subscribed to an amount equal to the limits of liability established under the national law or any applicable international regime, but not exceeding the limits provided by the Convention on Limitation of Liability for Maritime Claims (LLMC Convention) 1976, as amended by the 1996 Protocol thereto (amended in turn by IMO Legal Committee Resolution LEG.5(99) of 19 April 2012). To evidence the existence of the compulsory insurance, a certificate will be issued by the competent authority attesting that insurance or financial security is in force. This certificate must always be carried on board. The result is the creation of administrative functions on the States Parties to the Convention, both as flag States and port States, related to the issuing and monitoring of such certificates.

In direct connection with the requirement for compulsory insurance is the right of the claimants to address any claim for compensation for pollution damage directly against the insurer or other person providing financial security for the registered owner’s liability for bunker oil pollution damage. It is important to stress that even if the shipowner is not entitled to limit his or her liability, if sued directly, the insurer will be entitled to limit his liability to an amount equal to the amount of the insurance or other financial security required to be maintained. In practice, this means that direct action claims will be dependent on the amounts prescribed in national legislation, but will never higher than the amounts provided by the LLMC Convention 1976, as amended.

### 1.3.2 The Wreck Removal Convention

Following the approach of the preceding section, this section will not provide a full analysis of the Wreck Removal Convention but will limit the discussion to certain provisions that are of relevance to this Report. The Convention mainly addresses the removal of wrecks which, if not removed, may pose a hazard to navigation or pose a threat to the marine environment.

The Wreck Removal Convention defines a ship as “...a seagoing vessel of any type whatsoever...”. Accordingly, fishing vessels are covered by the Convention and are subject to its provisions.

The Convention describes the geographical area where it applies (Article 3), as well as the obligations of the relevant parties in reporting wrecks (Article 5), in the determination of a hazard (Article 6), in locating wrecks (Article 7), in marking wrecks (Article 8), and in the removal of wrecks (Article 9). The Convention then provides the basis of the shipowner's liability for wreck removal expenses (Article 10). Like the Bunkers Convention, the Wreck Removal Convention does not provide its own limitation of liability regime (Article 10(2)) and it would therefore be up to State Parties to look into their national legislation to see if this right exists.

Perhaps the most important point to mention is that the Wreck Removal Convention contains provisions on compulsory insurance (Article 12). In this respect, it must be noted that the registered owner of a ship of 300 gross tonnage and above flying the flag of a State Party is required to have an insurance. Other financial securities, e.g., a bank guarantee, are also allowed. The insurance or security shall cover liability under the Convention in an amount that equals the limits of liability under the applicable national or international limitation regime. In all cases, the amount shall however not exceed the limitation amount calculated in line with the LLMC Convention 1976, as amended. Furthermore, a certificate attesting that insurance or other financial security is in force shall be issued to each ship. The certificate is to be kept on board the ship. The Wreck Removal Convention also recognizes the right of direct action. Accordingly, the costs incurred in removing a wreck can be claimed directly from the insurer or the person that provides financial security. The insurer can then, more or less, use the same defenses as the registered owner. The insurer can also limit liability and the right to limit is not dependent on the owner's right to do so. An insurer or other person providing security can furthermore also invoke the defense that the maritime casualty was caused by the willful misconduct of the registered owner.

### 1.3.3 Directive 2009/20/EC

Directive 2009/20/EC was adopted on 23 April 2009 and became effective from 1 January 2012. Although this is a European Directive, it is of relevance as it evidences an international effort to impose a compulsory insurance requirement in relation to a convention which had not imposed such requirement.

The purpose of the Directive is to lay down rules applicable to certain aspects of the obligation on shipowners as regards their insurance for maritime claims (Article 1). It is noteworthy that, on 9 October 2008, the Member States adopted a statement in which they unanimously recognized the importance of the application of the 1996 Protocol to the LLMC Convention 1976 by *all* Member States (paragraph 3 of the preamble).

The requirement to be insured and the introduction and implementation of appropriate measures in the field of maritime transport policy, due to the nature of the legislative instrument (being a Directive, rather than a Regulation of the European Union), stipulates only the objectives to be achieved, leaving it to up to the individual Member States to decide on how the issue is to be addressed in the most efficient way at a national level.

As per Article 2, the Directive applies ships of 300 gross tonnage or more, but does not apply to warships, auxiliary warships or other State owned or operated ships used for non-commercial public service. Accordingly, the Directive can clearly cover fishing vessels. The Directive, however, shall not prejudice the national regime of the Member State established by the following instruments: CLC 1992, the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) 1996, ***Bunkers Convention***, ***Wreck Removal Convention*** and Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (Regulation 392/2009) (Article 2(3) and Annex).

***The Directive obliges each Member State to require shipowners*** flying its flag, or if the ship is flying a flag other than its own, ***to have insurance in place*** when such ships enter a port under the Member State's jurisdiction (if in conformity with international law, Member States may also require compliance with that obligation when such ship is operating in the territorial waters without entering its ports). Such insurance shall cover maritime claims subject to limitation under the 1996 Protocol to the LLMC Convention 1976 and the amount per incident is to be equal to the relevant maximum amount for the limitation of liability as laid down in that Convention (Article 4).

The existence of the compulsory insurance will be proved by one or more certificates issued by its provider and carried on board the ship (Article 6), and each Member State must ensure that any port State control inspection includes verification that the compulsory insurance certificate is carried on board (Article 5). Member States are further obliged to lay down a system of penalties for the breach of national provisions adopted pursuant to the Directive (and shall take all the measures necessary to ensure that those penalties are applied). The penalties provided for shall be effective, proportionate and dissuasive (Article 7).

### **1.3.4 Directive 2017/159/EC**

Another noteworthy European Union Directive is Council Directive (EU) 2017/159 of 19 December 2016, which implements the ***Agreement concerning the implementation of the Work in Fishing Convention, 2007 of International Labour Organization on 21 May 2012***, between management and labour ('social partners') at Union level in the sea-fisheries sector, namely the General Confederation of Agricultural Cooperatives in the European Union (GOGECA), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche).

Article 32 of the Work in Fishing Convention (C188) allows for the Member States, taking into account the characteristics within the fishing sector, the financial responsibilities of the fishing vessel owner under the Articles 29 (medical care) and 31 (work-related sickness, injury or death) to be ensured through: (a) a system of fishing vessel owners' liability; or (b) compulsory insurance, workers' compensation, or other schemes.

The Agreement referred to above builds on C188 and includes in Article 2 (SCOPE) the following:

#### **Article 2**

1. Except as otherwise provided herein, this Agreement applies to:

- (a) all fishermen working in any capacity under a contract of employment or in an employment relationship on all fishing vessels engaged in commercial fishing;
- (b) all other fishermen who are present on the same vessel with fishermen referred to in (a) in order to ensure the protection of the overall safety and health.

2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.

3. Any Member State, after consultation, may extend, in whole or in part, to fishermen working on vessels of less than 24 metres in length the protection provided in this Agreement for fishermen working on vessels of 24 metres in length and over.

#### 1.4 Third-party liability insurance in case of fishing vessels

Although many nations have adopted legislation concerning safety at sea, there is in fact no international convention in force that deals specifically with the safety of fishing vessels. The main reason for this gap is the great variation in design and operation between fishing vessels and other types of ships, and this has always proved a major obstacle to their inclusion. Insurance for fishing vessels per se is generally not mandatory either unless they fall under one of the categories of the vessels for which international instruments require third-party liability insurance such as the Bunkers Convention, the Wreck Removal Convention, or Directive 2009/20/EC. The wording of these instruments does not differentiate between fishing and other vessels and refers only to the size of the vessel involved. In fact, the applicability of limitation of liability provisions (which in the case of the EU are provided for in Directive 2009/20/EC), to fishing vessels is not uncommon. There is case law on the subject, for example, the cases *Capilano Fishing Ltd. v. The "Qualicum Producer"* 2001 BCCA 244 and *North Ridge Fishing Ltd. et al. v. The Prosperity* 2000 BCSC 1124.

At national level, there is limited inclusion of fishing vessels in regulations formulated by maritime administrations, while at the same time, industry representatives have, in some cases with success, lobbied for exemption for a variety of reasons. This reflects reluctance on behalf of the fishing industry to be subjected to a comprehensive regulatory programme. Fisheries have a long tradition of independence; many regard fisheries as the last frontier of free enterprise and resent government involvement. It is sometimes argued by the industry that the governments are inadequately informed of the risks and nature of fishing operations, or of the slim profit margins, which might be eroded by mandatory compliance with regulations on training, vessel construction and equipment. Additionally, legislators may refrain from imposing laws or regulations on fisheries that lead to additional costs.

The fisheries sector is important for the achievement of national economic, social, nutritional and financial objectives. Therefore, many governments aim to strengthen the economic and social viability of their fisheries industries in the context of efforts to introduce sustainable and responsible fishing practices and to conserve fisheries resources. An important factor that supports sustainable social and economic development and reduces vulnerability of the population in fisheries communities is the management of risks inherent to fisheries operations. In fact, ***it is emphasized that the proposal for an introduction of a compulsory insurance requirement is for the combined benefit of fisherfolk and injured parties***. In this respect, it must be recalled that maritime claims may be very expensive, and lack of insurance may lead to hardships when shipowners are faced with huge claims. An example of this is the case of *Margolle and Another v. Delta Maritime Co. Ltd. and Others (the "Saint Jacques II" and "Gudermes")* [2002] EWHC 2452 (Admlty.):

On 23 April 2001, the claimants' motor fishing vessel, *Saint Jacques II* collided with the first defendants' vessel, the motor tanker *Gudermes* in the English Channel. Three days later, the first defendants commenced an action claiming damages in respect of damage to their ship and to the cargo. The damages claimed were in the region of USD 700 000.

On 10 August 2001, the claimants constituted a limitation fund of about GBP 76 000. The first defendant opposed the claimants' entitlement to limit their liability and, based on the evidence available at the time, the Court refused to grant summary judgment and allowed the case to proceed to trial.

The case discussed above was eventually settled out of court, but it illustrates the types of claims that may be faced and helps us recognize that the amount of premium paid, may in the long term be much cheaper than the high costs of defending a claim for damages in court. Also, although the shipowner did not succeed in limiting his liability, the case illustrates the dramatic effect limitation of liability could have on potential claims.

The previously mentioned case of *Capilano Fishing Ltd v. Qualicum Producer (THE)*, 2001 BCCA 244, may also be considered as a perfect example on how expensive claims may be:

The claim was an action for damages sustained by the plaintiff in the 1997 herring fishery due to the maneuvers of the defendant's vessel subsequently leading to the plaintiff vessel's net being cut. The damages asked for included net price, value of the catch lost and the amount equal to the cost of fishing licenses that were thrown away. In first instance, the Defendant was entitled to limit his liability to the amount of approximately USD 40 000 (USD 37 906.07 CND plus USD 4 107.12 interest). However, on appeal, the Court held that the defendant was not entitled to limit liability and awarded damages in the amount of USD 168 750 plus USD 2 828.35 together with GST (Goods and services Tax).

To avoid these hardships, a number of countries have taken steps to provide a measure of protection against part of the risks inherent in fisheries by setting up insurance schemes of various kinds. However, insurance schemes are still in an early stage of development in the fisheries sector in many developing countries facing a number of institutional, financial, and technical constraints in their establishment.

## 2. SPAIN

### 2.1 **Royal Legislative Decree 2/2011, of 5 September, which approves the consolidated text of the law on state ports and merchant marine**

Article 254 of the Royal Legislative Decree 2/2011, of 5 September, which approves the Consolidated Text of the Law on State Ports and Merchant Marine provides the initial basis for a requirement of compulsory insurance. It states that:

Spanish shipping companies will be obliged to have insured any civil liability which they may incur in the course of the exploitation of their vessels, under the terms determined by the Government in accordance with the usual coverage offered in the international market. This regulation will also establish the compulsory nature and extent of the civil liability insurance for the navigation of any other Spanish civil vessels not included in the previous paragraph.

Likewise, the Government will determine the cases in which foreign vessels sailing through the exclusive economic zone, contiguous zone, territorial sea or Spanish inland waters must have insured the civil liability that may arise from their navigation, as well as the extent of such coverage.

From a general reading, this article may cover fishing vessels. In fact, even if someone may argue that this is limited to merchant or commercial vessels, the second paragraph extends its application to "any other Spanish civil vessels not included in the previous paragraph". This also would cover fishing vessels.

The Royal Legislative Decree 2/2011, of 5 September, which approves the Consolidated Text of the Law on State Ports and Merchant Marine then leads to the Royal Decree 1616/2011, of 14 November, which Regulates the Insurance of the Owners of Civil Vessels for Maritime Law Claims.

## **2.2 Royal Decree 1616/2011, of 14 november, which regulates the insurance of the owners of civil vessels for maritime law claims**

This Royal Decree incorporates into the Spanish legal system the provisions of previously mentioned Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the Insurance of Shipowners for Maritime Claims. Accordingly, the purpose of this Royal Decree is to establish and regulate the liability insurance that the owners of civil vessels must have to cover maritime claims (Article 1).

The Royal Decree applies to the owners of civil vessels, with a tonnage equal to or greater than 300 tonnes of gross registration, flying the Spanish flag. It also applies to owners of foreign civil vessels with a tonnage equal to or greater than 300 tonnes of gross registration, when their vessels enter a Spanish port or when, in accordance with international law, they are navigating in the Spanish territorial sea (Article 2). However, the Royal Decree does not apply to national or foreign warships, auxiliary naval units or other ships that, being owned or operated by a State, provide only public services that are not commercial in nature (Article 3). Since the excluded vessels do not cover fishing vessels, it is reasonable to argue that fishing vessels of 300 tonnes and over are covered by the Royal Decree.

According to the Royal Decree, the owners of civil vessels flying the Spanish flag, with a gross tonnage equal to or greater than 300 tonnes, must maintain an insurance or other financial guarantee that covers said vessels against any maritime claim. This requirement will also extend to EU vessels or vessels of third countries when they access a Spanish port or when they are navigating through the Spanish territorial sea (Article 5). The obtained insurance will be evidenced by a certificate of insurance issued by any of the entities listed in the Royal Decree (Articles 6 and 7). These certificates will be subject to scrutiny by port State control authorities (Article 8) and failure to carry the certificate will lead to sanctions (Article 9).

The Royal Decree makes it clear that its provisions do not affect the application of a number of conventions (if they are applicable in Spain). These include the CLC 1992, the HNS 1996, the Bunkers Convention, the Wreck Removal Convention, and the Regulation (EC) No 392/2009 (Single Additional Provision).

Recreational and sports vessels, whether used for private or commercial purposes, are also subject to an insurance requirement in relation to a number of risks as provided in the Royal Decree 607/1999, of 16 April, Regulation of Compulsory Civil Liability Insurance for Recreational or Sports Vessels. Whereas this is not aimed at fishing vessels, mention may be made of this Royal Decree since it covers floating objects intended for recreational and sports navigation propelled by an engine, including jet skis (as well as those that lack an engine, but are above six metres in length). This Royal Decree regulates many aspects including the scope, limit, and exclusions of the insurance, the assured, the insurer, and the documentation required.

## **2.3 Law 11/2008, of 3 December, on fishing in Galicia**

Whereas it was argued that the provisions mentioned earlier can cover fishing vessels, there is no direct reference to these type of vessels in the Royal Decrees mentioned above. This is not the case in Law 11/2008, of 3 December 2008, on Fishing in Galicia. In regulating fisheries in the Autonomous Community of Galicia, this Law aims to improve the living and working conditions of the people who practice this activity and the sustainability of the fishing itself. For this purpose, the Law aims to introduce the culture of insurance in the fishing sector. This is done through the twelfth additional provision, which states that:



Individuals or legal entities that carry out professional fishing, shellfish or aquaculture activities will have to maintain insurance that guarantees coverage of possible damages to third parties.

The competent department for fisheries, shellfish and aquaculture will promote the culture of insurance in the sector, promoting initiatives that enhance or introduce the maintenance of production insurance or of any other nature aimed at covering extraordinary contingencies in the exercise of the fishing, seafood and aquaculture activities.

Furthermore, Article 137 considers that the carrying out of professional fishing and shellfish activities without having insurance established by law, constitutes a grave offence. These offences will be subject to penalties as provided in Chapter III of the Law (Articles 139-151).

#### **2.4 Order dated 28 April 2011 laying down quantitative limits on third party liability insurance obtained for vessels engaged in professional fishing, shellfish and aquaculture**

This Order, which lays down quantitative limits on third party liability insurance obtained for vessels engaged in professional fishing, shellfish and aquaculture, is based on Article 148(1)(11) of the Constitution (which stipulates that the autonomous communities may assume competences in “fishing in inland waters, shellfish and aquaculture”), and Article 149(1)(19) (which grants the State exclusive jurisdiction over “maritime fishing, without prejudice to the powers attributed to autonomous communities in the management of the sector”). On this basis, the Statute of the Galician Autonomous Community claims the exclusive competence over “fishing in estuaries and other inland waters, shellfish and aquaculture” (Article 27(15)), and on “Fishermen’s associations” (Article 27(29)), as well as the legislative development and the execution of the legislation of the State of the subject “management of the fishing sector” (Article 28(5)).

It is based on the above that the twelfth additional provision of Law 11/2008, of 3 December, on fishing in Galicia (cited above) establishes the obligation, for natural or legal persons who carry out professional fishing, shellfish or aquaculture activities, to maintain an insurance that guarantees the coverage of possible damages to third parties (an obligation established under Article 75 of Law 50/1980, of 8 October, of Insurance Contracts).

The Administration considers that the professional activity of fishing, shellfish and marine aquaculture constitutes a risk in itself, as evidenced by the number of damages caused by accidents in the sector. In this respect, since Law 50/1980, of 8 October, attributes to the Administration the possibility of determining what activities cannot be carried out without the coverage of the aforementioned insurance, it was deemed necessary to include the abovementioned twelfth additional provision in the Galician Fishing Law. Therefore, pursuant to this provision and making use of the experience acquired in the sector, the Order dated 28 April 2011 establishes the quantitative limits to be contemplated in the third party liability insurance referred to in the twelfth additional provision of Law 11/2008, of 3 December, on fishing in Galicia, when such insurance is obtained in respect of fishing and shellfish vessels that require a licence to carry out their activities, as well as for auxiliary aquaculture vessels that carry out their activities in waters within the competence of the Autonomous Community of Galicia (Article 1).

In this respect, Article 2 of the Order establishes the following minimum limits for the sums insured per incident or occurrence:

- (a) One million Euro for those vessels whose crew does not exceed five people; and
- (b) Twenty-five million Euro for vessels whose crew exceeds five people.

Article 3 then requires that any policy of insurance so issued must contain, at least, the following indications:

- (a) Unless otherwise agreed, the insurer will assume the legal direction of the defence against the claim of the injured party, and the defence expenses incurred will be borne by him. The

assured must provide all the necessary collaboration to the legal defence assumed by the insurer.

- (b) The injured party or his heirs will have a right of direct action against the insurer to obtain compensation, without prejudice to the insurer's right of recourse or indemnity against the assured, in the event that the damage is due to the assured's malicious conduct.

## **2.5 Order dated 16 June 2011 laying down the regulatory bases for subsidies to promote insurance coverage for fishing, shellfish and aquaculture activities**

The preamble of this Order follows almost verbatim the legal basis expressed in the preamble of the Order dated 28 April 2011 laying down quantitative limits on third party liability insurance obtained for vessels engaged in professional fishing, shellfish and aquaculture (cited above).

In studying the substantial provisions of the Order dated 16 June 2011, it may be noted that Article 1 provides that subsidies regulated therein are intended for the taking out of civil liability insurance and accident insurance, whilst Article 2 lists the legal instruments that must be observed in the granting of subsidy.

Article 3 establishes the granting procedure. According to this Article, subsidies shall be granted by a non-competitive procedure among the applications submitted. The granting shall be subject to the *de minimis* subsidy scheme, so subsidies cannot exceed the quantitative limits (EUR 30 000 gross over a three-year period) established in the Commission Regulation (EC) No. 875/2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No. 1860/2004. The granting of these subsidies will be processed by the summary procedure established in Article 22 of Law 9/2007, of 13 July, of Galicia, concerning direct grants.

Article 4 provides for the beneficiaries of the subsidies, who may be:

- (a) In the case of civil liability insurance, natural or legal persons holding the policyholder status and carrying out professional fishing, shellfish or aquaculture activities.
- (b) In the case of accident insurance, natural persons carrying out shellfish gathering on foot or organizational entities of the sector that represent them.

Natural or legal persons may not be beneficiaries of these subsidies under certain circumstances established in Article 10(2) and (3) of Law 9/2007 (including, *inter alia*, bankruptcy, incompatibility or residence in a tax haven) and in Article 1(7) of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation).

Article 5 of the Order provides that the public subsidy regulated in it is to be financed from a specific budget allocation for promoting the culture of insurance, which forms part of the budget of expenses of the Department of the Sea. The maximum amount of subsidies granted cannot exceed one hundred fifty thousand Euro (EUR 150 000). Notwithstanding the above, the granting of subsidy will be subordinated to the existence of adequate and sufficient funding. In the event that the number of applications exceeds the available funding, the maximum overall amount projected among the beneficiaries of the subsidy will be prorated according to the provisions of Article 19(3) of Law 9/2007.

The Order then prescribes the format of applications—together with the documentation that has to be included— (Article 6), and the place of submission of applications (Article 7). Amongst the requirements of the application is the insurance policy, which must match the amounts prescribed in the Order dated 28 April 2011 (cited above), namely:

- (a) One million Euro for those vessels whose crew does not exceed five people; and
- (b) Twenty-five million Euro for vessels whose crew exceeds five people.

Additionally, it is provided that “[i]n the event that the subsidized activity is the contracting of accident insurance, the insurance must have a minimum coverage of eighteen thousand Euro in case of death” (Article 6).

Article 8 also sets out the amount of the subsidy provided for in the Order as follows:

- (a) In the case of civil liability insurance, 25 percent of the annual policy premium, with a maximum limit of 25 Euro per crew member.
- (b) In the case of accident insurance, 25 percent of the premium of the annual policy, with a maximum limit of 25 Euro per shellfish worker.

The remaining articles of the Order go on to provide all procedural issues necessary to obtain the public subsidy it regulates.

### **3. MALTA**

#### **3.1 Merchant shipping (liability for bunker oil pollution damage) regulations 2009 (subsidiary legislation 234.46)**

The Merchant Shipping (Liability for Bunker Oil Pollution Damage) Regulations (published through Legal Notice 40 of 2009), incorporate the Bunkers Convention (including any amendment or Protocol related thereto as may from time to time be ratified, acceded or accepted by the Government of Malta) into the Laws of Malta. These Regulations apply to all Maltese ships, wherever they may be and to all other ships while they are in Maltese waters (including fishing vessels) as determined by the said Convention (Article 3).

The Regulations implement the requirement prescribed by Article 7 of the Bunkers Convention that compulsory insurance or other financial security must be maintained by a vessel of a gross tonnage greater than 1 000 and registered in the State Party. In so doing, Article 3(5) of the Regulations delegate the power to issue the certificates attesting that insurance, as referred in Article 7(2) of the Bunkers Convention, in respect of ships registered in Malta to the Registrar-General.

In the subsequent articles, the Regulations reaffirm principles illustrated in the Bunkers Convention mainly Article 5 (duty of the registered owner to ensure compliance), Article 6 (prohibition of proceeding to sea without appropriate certificate for the Maltese or prohibition of proceeding to ports, installations or territorial waters of Malta for the foreign flagged ships), and Article 7 (enforcement of foreign judgement in local Courts unless fraudulently obtained or without due notice for the defendant).

Hence, despite the lack of a specific reference to fishing vessels, the requirement to maintain insurance in respect of bunker oil pollution damage would also be applicable to fishing vessels of a tonnage of 1 000 and above. The minimum amount of compulsory insurance for bunker oil pollution damage will be the limits of liability set out in the Limitation of Liability for Maritime Claims Regulations 2004, as amended (Subsidiary Legislation 234.16).

#### **3.2 Merchant shipping (wreck removal convention) regulations 2015 (subsidiary legislation 234.53)**

In a similar manner to the Bunker Pollution Damage Regulations discussed above, the Merchant Shipping (Wreck Removal Convention) Regulations (published through Legal Notice 83 of 2015) incorporate the Wreck Removal Convention into the Laws of Malta through the references made to the Articles of the Convention. Accordingly, the Regulations extend the application of the Convention to Maltese ships wherever they may be and to all other ships while they are in Maltese waters (including fishing vessels) as determined by the Convention (Article 2 explains that Conventional area for the

purposes of this Regulation is an area beyond and adjacent to the territorial sea of Malta and extending to twenty-five nautical miles from the baselines).

Following the approach of the Bunker Pollution Damage Regulations, the Merchant Shipping (Wreck Removal Convention) Regulations, rather than repeating the wording of the Convention, make references to the articles of the Convention and limits itself to actually implementing its provisions and delegating the powers and responsibilities to the local authorities. Therefore, the Regulations require ships (including fishing vessels) with a tonnage of 300 and over, to maintain insurance in respect of wreck removal expenses. The Registrar-General is designated as the competent authority for the purpose of issuing the certificates attesting the validity of insurance cover.

Therefore, all fishing vessels flying the Maltese flag of a tonnage of 300 or over, or any fishing vessel of the same size wishing to approach the zone covered by the Regulations, must have an insurance covering the liability arising under the Convention. The minimum amount of compulsory insurance for wreck removal expenses will be the limits of liability set out in the Limitation of Liability for Maritime Claims Regulations 2004, as amended (Subsidiary Legislation 234.16).

### **3.3 Merchant shipping (insurance for maritime claims) regulations 2012 (subsidiary legislation 234.50)**

Whilst the above cited Regulations deal specifically with compulsory insurance for specific types of claims (i.e., bunker oil pollution and wreck removal expenses, respectively), the Merchant Shipping (Insurance for Maritime Claims) Regulations (published through Legal Notice 484 of 2011) adopt a more holistic approach by implementing the measures contained in Directive 2009/20/EC. The Regulations apply to ships of 300 gross tonnage or more that are either registered in Malta or any other ships calling at Maltese ports with the exception of warships, auxiliary warships and government ships used for non-commercial purposes (hence it covers fishing vessels) (Articles 3 and 4).

The insurance referred to in the Regulations shall cover maritime claims subject to limitation of liability under the Merchant Shipping (Limitation of Liability for Maritime Claims) Regulations 2004, as amended (Subsidiary Legislation 234.16) and the amount of insurance for each and every ship per incident shall be equal to the relevant maximum amount for the limitation of liability set out in the latter Regulations, which reflect the limits of liability set out in the 2012 amendments to the LLMC Convention (Article 4(3)).

The certificates attesting the validity of insurance must be issued by the insurance provider and must be carried on board the ship at all times (Article 6). The verification of the certificates is included in the inspections conducted in accordance with the Merchant Shipping (Port State Control) Regulations 2011 (Subsidiary Legislation 234.38) (Article 5), and in any case where the provisions of the Regulations are not complied with, the person or person guilty shall be liable to a fine (Article 7).

### **3.4 Small ships regulations 2008 (subsidiary legislation 499.52)**

Whilst the three Regulations discussed above may apply to fishing vessels of a tonnage of 300 and over, the Small Ships Regulations (published through Legal Notice 183 of 2008) cover small fishing vessels, by addressing, *inter alia*, the registration of small ships under twenty-four metres of length.

The Regulations describe a “***small fishing vessel***” as “a small ship under twenty-four metres in length employed solely in navigation within the territorial waters of Malta, whether mechanically driven or not, for the time being used for, or in connection with, fishing, other than a small ship used or intended to be used for fishing otherwise than for profit”. Furthermore, the Regulations provide that a “***small ship***” “means a craft under twenty-four metres in length employed solely in the navigation within the territorial waters of Malta, whether mechanically driven or not, and whether privately or commercially used; and includes, but is not limited to, all types of craft such as sailing boats, yachts, ***fishing vessels***

*and other craft used for fishing like caiques, luzzijiet and frejgatini*, cabin cruisers, speedboats, jet skis, dinghies, passage boats and other Maltese traditional boats, paddleboats, canoes, personal water craft, aircushioned craft etc.” (Article 2).

Article 3(1) then provides that no mechanically driven small ship (having an engine or engines with a combined power of 10 H.P. or more) is allowed to be used in Maltese waters (internal and territorial) unless it is registered with the responsible Authority to the satisfaction of the laws of Malta. *The registration itself as preconditions requires* the necessary safety equipment (Article 4) and *a policy of insurance for an amount approved by the Authority against liability which may be incurred in respect of death, injury or damage to third party property caused by, or arising out of, the use of the mechanically driven small ship* (Article 5).

Moreover, the Regulations expressly provide that it shall not be lawful for any person to use or to cause or allow any other person to use a mechanically driven small ship *unless there is a valid policy of insurance in respect of third party risks*, which complies with the requirements of Article 5, and liability for the lack of the required insurance varies from fine and seizure of the ship to imprisonment (Article 43).

## 4. JAPAN

### 4.1 Act on liability for oil pollution damage 1975 (act no. 95 of 27 december 1975)

Compulsory insurance for oil pollution damage was originally introduced in Japan through the Act on Liability for Oil Pollution Damage 1975 (Act No. 95 of 27 December 1975) in respect of oil tankers. However, in 2004, the Japanese Government amended this Law to extend the requirement to other types of vessels and to address another type of claims (to address the problem of abandoned shipwrecks in Japanese coastal waters). With this amendment, as from 1 March 2005, the shipowner of a vessel calling at any Japanese port must have P&I insurance for the vessel, must carry the relevant certificate on board, and must report the status of insurance to a relevant District Transport Bureau before entering a port.

The compulsory insurance requirement applies to all ocean-going ships (excluding oil tankers, which are already obliged to have insurance under the CLC) that are of 100 gross tonnage or larger (Article 39-4). Whilst, this requirement does not apply to warships and Government ships operated for non-commercial purposes, it certainly applies to fishing vessels.

The required insurance must cover damage caused by bunker oil pollution and wreck removal expenses (Article 39-5). Article 39-5(3) provides that the minimum amount of compulsory insurance cover must match the limits of liability set out in the Law on Limitation of Shipowner Liability (Law No. 94 of December 27, 1975). Whilst the latter Law aims to implement the provisions of the LLMC Convention, as amended, some of the provisions of the Law are not the same as those of the Convention. It is particularly noteworthy that, whereas the Law incorporates the Convention's limits of liability in relation to property claims, the limits of liability for loss of life or personal injury in the Law are higher than those of the Convention. It is also important to highlight that the Law provides a separate limit of liability for wooden ships of less than 100 tonnes. In this respect, Article 7 of the Law provides that:

- (1) The liability limits are as follows if a limitation of liability as provided in paragraph (1) or (2) of the preceding Article is invoked:
  - (i) if a person seeks to limit liability only in respect of Property Damage Claims: the amounts calculated as provided in the following, based on the tonnage of the Ship; provided,

however, that in the case of a wooden ship of less than 100 tonnes, the liability limit is an amount equivalent to 507 360 Units<sup>[2]</sup>:

- (a) for a Ship of 2 000 tonnes or less: an amount equivalent to 1 510 000 Units; and
- (b) for a Ship of over 2 000 tonnes: the amount referred to in (a) plus the amount arrived at by adding 604 Units for each ton from 2 001 tonnes to 30 000 tonnes, 453 Units for each ton from 30 001 to 70 000 tonnes, and 302 Units for each ton in excess of 70 000 tonnes.

(ii) in other cases: the amounts calculated as provided in the following, based on the tonnage of the Ship:

- (a) for a Ship of 2 000 tonnes or less: an amount equivalent to 4 530 000 Units; and
- (b) for a Ship of over 2 000 tonnes: the amount referred to in (a) plus the amount arrived at by adding 1 812 Units for each ton from 2 001 to 30 000 tonnes, 1 359 Units for each ton from 30 001 to 70 000 tonnes, and 906 Units for each ton in excess of 70 000 tonnes.

Ships that do not have the required insurance are denied entry to any Japanese port (Article 39-4(2) of the Act on Liability for Oil Pollution Damage 1975). Furthermore, Government officers, including the port State control officers, may board a vessel to inspect the relevant insurance certificate (Article 42). If the Master fails to produce the certificate, the Master and/or the shipowner would be penalized and the vessel may be detained (Article 42-2). In this respect, the Law provides that the Master will be guilty of an offence when:

- the vessel, without an appropriate insurance cover, enters a port in Japan;
- the vessel, without a relevant certificate, enters a port in Japan;
- the Master fails to report or reports false information to the Authority; and
- other cases provided by the Law.

## 5. ALBANIA

### 5.1 Law no. 10 076 of 12 February 2009

Law No. 10 076 of 12 February 2009 regulates the compulsory insurance within the transport sector. Pursuant to Article 2(1), the Law applies to compulsory insurance requirements within the transport sector which includes “d) the insurance of the owner or user (hereinafter referred to as: the owner) of a vessel against liability for damage caused to third parties.”

In accordance with Article 3(19), “Vessel” and “Small vessel” means “**any** floating vessel intended for sailing on the sea pursuant to the definitions in the Maritime Code”. The same Article defines “means of transport” as a motor vehicle, an aircraft, and a vessel. This definition is important as Article 4 obliges the owner of any means of transport “to conclude an insurance contract prior to the use of a means of transport in traffic and to ensure its renewal thereof as long as the means of transport shall remain in use”. Furthermore, “[i]f the means of transport are subject to the obligation of registration or licensing, and, according to law, it must have a registration or a licensing certificate, the responsible body may issue a registration certificate or any other document equivalent to it only after the owner of the means of transport shall confirm by evidence that he has concluded an insurance contract pursuant to this law”.

In accordance with the Maritime Code of Albania, the vessel registry is a structure within the Maritime Administration and is responsible for the registration, licencing of Albanian vessels or foreign vessels under a bareboat charter agreement, as well as of other activities stipulated in the Code. The vessels registered in the Albanian registry must meet the requirements of Article 39 of the Code regarding

<sup>2</sup> The Units referred to in this Article are the Special Drawing Rights as defined by the International Monetary Fund. For more information, please see ([https://www.imf.org/external/np/fin/data/rms\\_sdrv.aspx](https://www.imf.org/external/np/fin/data/rms_sdrv.aspx)).

their ownership and, in accordance with Article 40, the motorized vessels must be greater than 76 HP or, if not motorized, must be greater than 80 BT or over 80 tonnes water displacement. Separate registries shall be maintained for the different categories of vessels, including merchant vessels, *fishing vessels*, vessels under construction, bareboat chartered vessels and small vessels.

In accordance with Law No. 10 076 of 12 February 2009, the compulsory insurance contract as referred to in Article 2(1)(d) “shall cover damages or losses sustained in the Republic of Albania”. Chapter VII deals with Vessels Owners’ Third-Party Liability Insurance. Article 50 (Obligation to conclude an insurance contract) makes mandatory for every vessel (which as stated above is defined as *any* floating vessel intended for sailing on the sea), including small size vessels with engine power greater than 15kW to maintain a compulsory insurance for damage caused to third parties. It provides that:

1. The owner of small size vessel with engine power greater than 15 kW, which according to regulations on registration of boats must be entered in the vessels registry, shall be obliged to conclude a liability insurance contract for property and non-proprietary damages caused to third parties.

It is noteworthy that most regrettably the requirement of insurance in the abovementioned paragraph does not extend to claims for loss of life or personal injury. This is made clear in paragraph 2 which provides that:

2. The third parties referred to in Paragraph 1 of this Article shall not include persons on board of the vessel causing the damage, nor persons on board of the other vessel or persons on board of any other vessel.

It is also important to note that Article 50(3) extends the compulsory insurance requirement to foreign vessels entering the territorial waters of Albania, by providing that:

3. An owner of a foreign vessel, which sails into the territorial waters of the Republic of Albania, shall have a valid third party liability insurance contract as referred to in paragraph 1 of this Article unless there is another guarantee for compensation of damages, or unless has been determined otherwise by international agreements.

Lastly, small size engine driven vessels navigating in the inland waters of Albania are also subject to the provisions of this Law as per Article 50(4), which provides that:

4. The provisions of this Article shall be also applied to the liability of owners of small size engine driven vessels during navigation in the inland waters of the Republic of Albania.

The liability of the owners of the vessels stipulated in Article 50 (Sum Insured) is calculated in accordance with Article 51, which provides that:

1. The obligation of the insurance undertaking regarding compensation of damages pursuant to article 50 hereof, shall be equal to the insured sum valid as of the day of the loss event, except for cases when a higher amount has been determined by an insurance contract.
2. The minimum sum insured in the insurance contract pursuant to the provisions set forth in paragraph 1 of this article shall be 50 000 000 Albanian Leks [c. Euro 400 000] per each single loss event.

Considering that the abovementioned Law defines “Vessel” and “Small vessel” as “*any* floating vessel intended for sailing on the sea pursuant to the definitions in the Maritime Code”, it is suggested that the requirement of third party compulsory insurance discussed above applies also to fishing vessels.

Moreover, it is worth mentioning that Albania is a State Party to both the Bunkers Convention and the Wreck Removal Convention. Considering that both Conventions mandate vessels (including fishing vessels) of 1 000 GT and 300 GT, respectively, to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under the Conventions in an amount

equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6(1)(b) of the LLMC Convention, as amended, the provisions of Law No. 10 076 (discussed above) would apply in case of any damage stipulated by the Conventions. Albania is also a State Party to the LLMC Convention as amended and, therefore, the limits stipulated in its Article 6(1)(b) would be applicable.

## **6. THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

### **6.1 The merchant shipping (compulsory insurance: ships receiving trans-shipped fish) regulations 1998**

The Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-Shipped Fish) Regulations 1998 (which entered into force on 6 April 1998), make insurance, or another form of financial security, compulsory for any ship in respect of which a trans-shipment license issued under section 4A of the Sea Fish (Conservation) Act 1967 is in force. These trans-shipment licenses are issued to all ships involved in trans-shipment operations in respect of pelagic fish in United Kingdom waters, whether the ship is used to process fish or to store and refrigerate it.

In accordance with these Regulations, the owner, charterer and master of a ship shall ensure that there is in force in respect of the ship a contract of insurance (Regulation 4(1)) insuring the owner against the following liabilities (Regulation 5):

- (a) any liability under section 154 of the [Merchant Shipping] Act [section 154 covers liability for oil pollution in case of other ships (other than tankers)];
- (b) any liability for the costs of any operation to remove or render harmless the ship, or any article which had been on the ship, taken under the powers conferred by sections 252 or 253 of the Act or under corresponding powers under any statutory provision of local application;
- (c) any liability for payment of salvage awards under Article 12 or 13, and special compensation under Article 14, of the International Convention on Salvage 1989; and
- (d) any liability for the cost of providing relief to, and of repatriating, seamen left behind or shipwrecked.

Regulation 6 provides that the requirements needed to be satisfied for the contracts of insurance or other security to be deemed sufficient for the purpose of these Regulations are specified in the Merchant Shipping Notice No. MSN 1711 (published on 1 February 1998). It is noteworthy that, in accordance with paragraph 2 of this Notice, the contracts of insurance or other security satisfying Regulation 6 are:

- (a) contracts of entry with a member of the International Group of Protection and Indemnity (P&I) Clubs;
- (b) contracts with any other insurer authorized to provide insurance in accordance with the law of a State which is a Contracting Party to the Agreement on the European Economic Area; and
- (c) the guarantee of a bank, or similar financial institution, authorised to carry out banking activities in accordance with the law of a State which is a Contracting Party to the Agreement on the European Economic Area.

Any person required by the Regulations to ensure that there is in force a contract of insurance or other security, shall ensure that documentary evidence of compliance with this requirement is carried in the ship (Regulation 7). Paragraph 4 of the abovementioned Merchant Shipping Notice No. MSN 1711 mandates that such documentary evidence shall be in English or include an English translation and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the shipowner;
- (c) IMO ship identification number (where appropriate);
- (d) type and duration of security;



- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of the insurance or other security.

The Regulations impose penalties on any person contravening the obligations stipulated therein and empower the officers listed in section 284 of the Merchant Shipping Act to detain the ship failing to comply with the requirements of these Regulations. Furthermore, in accordance with paragraph 6 of the Merchant Shipping Notice No. MSN 1711:

Where a ship is found to have contravened the Regulations, the Secretary of State may serve a prohibition notice on the ship under section 100G of the Merchant Shipping Act 1995. Such a notice would prohibit the ship from receiving and/or processing fish. Non-compliance with such a notice would be a criminal offence, punishable by a fine and/or by imprisonment.

## **6.2 Merchant shipping notice no. m.757**

The Merchant Shipping Notice No. M.757 was published by the Department of Trade, Marine Division in August 1976. The Notice issued to Shipowners and Owners of Fishing Vessels makes reference to the Employers' Liability (Compulsory Insurance) Act 1969 (which is still in force) and Employers' Liability (Compulsory Insurance) General Regulations, 1971 (which were amended several times and repealed in 1998).

The Employers' Liability (Compulsory Insurance) Act 1969 requires every employer carrying on any business in Great Britain, unless exempt, to insure against liability for bodily injury or disease sustained by his employees in the course of their employment, and to maintain this insurance. Whilst this is a general Act that applies to all types of employers, in accordance with the Merchant Shipping Notice No. M.757 (published in August 1976), shipowners and *owners of fishing vessels* are included in respect of employment in Great Britain and in the areas within the baseline from which territorial waters are measured.

Whereas the employers in general are required to display the insurance certificates, or copies thereof, in prominent places so that they can be easily seen and read by every employee, this requirement does not need to be complied with in case of an employer (e.g. shipowner) insured with a P&I Club. The idea behind such exclusion is that generally P&I Club insurance obtained by the shipowner has a comprehensive coverage and as a rule includes the employer's liability: "*the employer against liability to his employees while they were in port and at sea, whether inside or outside the 3-mile limit of territorial waters*". It should be mentioned, however, that the exemption from the requirement of the Act to display the certificate of insurance is applicable provided that the Club Certificate of Entry is still available. Failure to obtain insurance or display a certificate obtained, is subject to a penalty (Merchant Shipping Notice No. M.757, fifth and seventh unnumbered paragraphs).

## **6.3 Fisheries act 1981**

The Fisheries Act 1981 was promulgated to establish a Sea Fish Industry Authority with the duty of promoting the efficiency of the sea fish industry in the United Kingdom; to provide financial assistance for that industry; to amend the law relating to the regulation of sea fishing; to make new provision in relation to fish farming; to amend the enactments relating to whales and the importation of live fish; to extend sections 6 and 7 of the Freshwater and Salmon Fisheries (Scotland) Act 1976 to the part of the River Tweed outside Scotland; to repeal section 5(3) of the Fishery Board (Scotland) Act 1882; and to enable the Department of Agriculture for Northern Ireland to incur expenditure on fishery protection in waters adjacent to Northern Ireland.

Part II of the Act is entitled "Financial Assistance for Sea Fish Industry". Although this Part does not make express provisions in terms of assistance for the obtaining of insurance by those engaged in the Sea Fish Industry, it stipulates that "The Ministers may, in accordance with a scheme made by them

with the approval of the Treasury, make grants or loans for the purpose of re-organising, developing or promoting the sea fish industry or of contributing to the expenses of those engaged in it.” Hence, it is submitted that, subject to its approval by the Parliament (Section 15(3)), the scheme may include coverage for the expenses necessary for the compulsory insurance of those vessels engaged in the Sea Fish Industry. It should be noted that, in accordance with Section 18(2):

- 2) For the purposes of this Part of this Act “the sea fish industry” means the sea fish industry in England and Wales and Northern Ireland and a person shall be regarded as engaged in the sea fish industry if—
  - (a) he carries on or is employed in the business of operating vessels for catching or processing sea fish or for transporting sea fish or sea fish products, being vessels registered in England and Wales and Northern Ireland [...].

## **PART 2. ASSESSMENT OF LEGAL FRAMEWORKS IN THE CARIBBEAN IN RELATION TO THE POSSIBLE INTRODUCTION OF A COMPULSORY INSURANCE (THIRD-PARTY LIABILITY) REQUIREMENT FOR FISHING VESSELS**

### **7. BARBADOS**

#### **7.1. INTRODUCTION**

The analysis of the Legal Framework of Barbados covers legislation governing the maritime zones wherein the State enjoys sovereignty, sovereign rights, or jurisdiction in relation to fishing related matters (*i.e. the Marine Boundaries and Jurisdiction Act, 1978*), legislation on coastal zone management (*i.e. the Coastal Zone Management Act, 1998 (Cap 394)*), legislation on shipping related matters – including *inter alia* ship registration and limitation of liability (*i.e. the Shipping Act, 1994 (Cap 296)*), legislation on fisheries matters (*i.e. the Fisheries Act, 1993 (Cap 391) and the Fisheries (Management) Regulations, 1998*) as well as legislation on insurance related matters (*i.e. the Marine Insurance Act, 1979 (Cap 292) and the Insurance Act, 1997 (Cap 310)*). In this category, the *Road Traffic Act, 1981 (Cap 295) and the Shipping Oil Pollution Act, 1994 (Cap 296A) SOPA* were considered, particularly insofar as they relate to a requirement of compulsory insurance).

#### **7.2. LEGISLATION ON MARITIME ZONES**

##### **7.2.1. Marine Boundaries and Jurisdiction Act, 1978**

The Marine Boundaries and Jurisdiction Act, 1978 is an Act to provide for the establishment of marine boundaries and jurisdiction, particularly in relation to the exclusive economic zone (EEZ). This is important because beyond the territorial sea (which is subject to the sovereignty of the State), there is a possibility of claiming an EEZ where specific sovereign rights and limited jurisdiction is recognized by the international law of the sea. In this respect, the Marine Boundaries and Jurisdiction Act establishes the EEZ, having as its inner limit the seaward limit of the territorial waters and extending up to 200 nautical miles from the baselines (section 3(1)).

Fishing in the EEZ is regulated by Part III of the Act, including the permission to fish, the form and content of the permit, as well as the variation, revocation or suspension of the permit to fish.

#### **7.3. LEGISLATION ON COASTAL ZONE MANAGEMENT**

##### **7.3.1. Coastal Zone Management Act, 1998 (Cap 394)**

The Coastal Zone Management Act would not seem, in principle, to have relevance in a possible compulsory insurance requirement. However, it may be worth noting that regarding enforcement, section 16 empowers a coastal zone inspector or a police officer *inter alia* to: “(a) arrest any person who is found *removing, aiding or assisting in removing* contrary to this Act, any flora, *fauna*, wreck and any other items of archaeological or historic interest from a restricted area;” and to search and seize any vessel suspected to have been used in the commission of an offence. It is also worth noting that section 17 empowers the Minister to make regulations, *inter alia*, for:

[...]

(b) the protection of coral reefs in any restricted area, and in particular prohibiting or regulating

[...]

(ii) fishing; and

[...]

(c) the protection of the flora and fauna and wrecks in the restricted areas;

[...]

(f) the seizure and confiscation of any flora, fauna, *wreck or any part thereof* taken in contravention of the regulations and of any vehicle, *vessel or other means of conveyance* whatsoever upon which the same may be found.

## 7.4. LEGISLATION ON SHIPPING RELATED MATTERS

### 7.4.1. Shipping Act, 1994 (Cap 296)

The Shipping Act is an all-encompassing Act dealing with ships, crews, safety at sea and with matters consequential, related or incidental thereto. It is thus an important Act for the purposes of this Report. Section 2 of the Act provides a number of definitions that are important for the topic subject of this Report. Amongst such definitions it is important to mention the following:

[...]

(r) "fishing-boat" means a vessel used or intended to be used in capturing fish for gain;

[...]

(x) "local fishing vessel" means any commercial fishing vessel

(i) wholly owned by the Government of Barbados;

(ii) wholly owned by one or more individual who are citizens of Barbados or permanent residents of Barbados within the meaning of the Immigration Act;

(iii) wholly owned by a company, society or other association of persons incorporated or established under the laws of Barbados and having its principal place of business in Barbados, all the members of which are citizens of Barbados or permanent residents of Barbados within the meaning of the Immigration Act or all the shares or stock of which are beneficially owned by such citizens or permanent residents of Barbados or by a company, society or other association of persons described in this paragraph; or

(iv) certified in writing by the Minister as having such substantial economic connections with Barbados in relation to its ownership as to be deemed to be a local fishing vessel for the purpose of this Act;

but does not include any fishing vessel registered outside Barbados;

[...]

(ss) "small commercial vessel" means a vessel that is less than 150 gross tonnes, is registered in Barbados and operates within the Exclusive Economic Zone of Barbados;

(tt) "vessel" includes any ship or boat used in navigation;

Upon reading the above definitions it is clear that the Shipping Act applies to fishing vessels (at least in some respects). It is, however, important to mention that Section 5(1), subject to any international agreement or convention that the Government of Barbados has ratified or adhered to in the case of foreign-going ships or other classes of ships, allows the Minister to exempt any ship or class of ship, or any person or class of persons, from all or any of the provisions of the Act. Furthermore the Minister may modify application of the Act to near coastal trade ships or Caribbean trade ships in such manner and to such extent as he may by order prescribe (Section 5(2)).

Of particular importance is the requirement of registration. In this respect, Section 7(1) provides that no ship shall trade in or from the waters of Barbados unless the ship is a Barbadian ship; or is provided with a certificate of foreign registry or other document similar or equivalent to that required by the Act. Very importantly, Section 7(2) provides that "[e]very Barbadian ship trading in any waters and every ship trading in or from the waters of Barbados *shall provide evidence of financial responsibility*

*against risks of damage to third parties in such a manner as may be prescribed.* [This provision may pave the way for the introduction of the requirement of compulsory insurance for fishing vessels].

Section 8(1) provides that a ship is required to be registered as a Barbadian ship if the ship qualifies for registration under Part I of the Act, and Section 8(2) provides that a ship so not registered shall not be recognised as a Barbadian ship, and is not entitled to the rights and privileges accorded to Barbadian ships under the Act. In this respect it is important to highlight that, in accordance with Section 8(4)(b) a ship qualifies for registration if “the ship is a local fishing vessel registered under the Fisheries Act [...]”.

Section 14 requires that each Registrar keeps a register, including the following books “[...] a register-book for fishing vessels except for vessels registered under the Fisheries Act; [...]” (Section 14(2)(b)). In this respect it is noteworthy that “[w]here a vessel is registered under the *Fisheries Act* as a fishing-boat, it may be registered by the Director of Maritime Affairs in a register-book for local fishing vessels under this Part by filing a copy of its certificate of registration under that Act” (Section 14(4)).

Section 15(1), when dealing with small commercial vessels and Caribbean trade ships which are below 150 tonnes but which otherwise qualify for registration, requires them to be registered by the Director in a small vessel register, as may be prescribed in section 14(3), but this shall not include vessels which are under one ton unless they are engaged in the carriage of passengers and cargo for hire or reward pursuant to the Barbados Port Authority Act. The Director may also keep a provisional registry file for small vessels. However, Section 15(3) provides that “[t]his section does not apply to a fishing boat registered under the Fisheries Act”.

Another important topic for the purpose of compulsory insurance, at least in so far as determining the amount of possible financial exposure of fisherfolk in relation to damages caused by their activities, is that of limitation of liability. In this respect, Part VI of the Act deals with Limitation and Division of Liability.

Section 302(1) gives force of law in Barbados to the provisions of the Convention on Limitation of Liability for Maritime Claims 1976 that are set out in Part I of the Second Schedule to the Act. These would be subject to the provisions of Part II of that Schedule (Section 302(2)). This Convention, together with the 1996 Protocol thereto (to which Barbados is not yet a party) set out the legal framework for the exercise of the right to limit liability for maritime claims. It is noteworthy that claims in the maritime field may be very high (even to the point of bringing a shipowner to bankruptcy), hence the right to limit liability has been instrumental in the promotion of the maritime industry. However, even the limits provided are still high for the smallest vessels leading to a high potential financial exposure. It may be noted that Article 6 of the 1976 Convention, as set out in schedule II to the Act provides that:

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows
  - (a) in respect of claims for loss of life or personal injury
    - (i) 333 000 Units of Account for a ship with a tonnage not exceeding 500 tonnes.
    - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i)
      - for each ton from 501 to 3 000 tonnes, 500 Units of Account; for
      - each ton from 3 001 to 30 000 tonnes, 333 Units of Account; for
      - each ton from 30 001 to 70 000 tonnes, 250 Units of Account; and
      - for each ton in excess of 70 000 tonnes, 167 Units of Account;
  - (b) in respect of any other claims
    - (i) 167 000 Units of Account for a ship with a tonnage not exceeding 500 tonnes,
    - (ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned for (i)

for each ton from 501 to 30 000 tonnes, 167 Units of Account, for each ton from 30 001 to 70 000 tonnes, 125 Units of Account; and for each ton in excess of 70 000 tonnes, 83 Units of Account.

It is however important to note that, to protect smaller vessels, Section 5(1) of Part II of Schedule II of the Act provides that

In the application of Article 6 to a ship with a tonnage less than 300 tonnes that Article shall have effect as if

- (a) paragraph (a)(i) referred to 166 667 Units of Account; and
- (b) paragraph (b)(i) referred to 83 333 Units of Account

It is also important to note that Barbados does not allow the right to limit liability in respect of, *inter alia*, the following claims:

305. (1) The provisions having the force of law under section 302 of this Act shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property of, a person who is on board the ship in question or employed in connection with that ship or with the salvage operations in question if

- (a) he is so on board or employed under a contract of service governed by the laws of Barbados; and
- (b) the liability arises from an occurrence which took place after the coming into force of this subsection.

This latter provision will protect the full recovery for claims from the crew of fishing vessels. In fact, an interesting question that could be posed is whether a fishing vessel is a ship for the purposes of the Convention. In this respect, Section 12 of Part II of Schedule II of the Act provides that:

References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

Further clarification is Provided by section 2(1)(rr) of the Act which provides that:

- (rr) "ship" means every description of vessel used in navigation which is not propelled by oars and in Parts II and VII includes every description of lighter, barge or like vessel however propelled;

Accordingly, in light of these provisions, the Convention on Limitation of Liability for Maritime Claims 1976 would apply to fishing vessels also – even the small ones (in this respect it may be interesting to note that jurisprudence has determined that even a craft like a jet ski can be considered a ship for the purposes of the Convention).

## **7.5. LEGISLATION ON FISHERIES RELATED MATTERS**

### **7.5.1. Fisheries Act, 1993 (Cap 391)**

Barbados Fisheries Legislation is contained in *An Act to provide for the management and development of fisheries in Barbados* (Fisheries Act) (Cap 391). The Act defines a “fishing vessel” as “any vessel used or intended for use for fishing or related activities”, while a “foreign fishing vessel” is “any fishing vessel other than a local fishing vessel”.

Regarding foreign fishing vessels licences, the Act contains no mention of a requirement of Insurance. In fact, Section 8(5) imposes the only limitation on the issue of a licence by providing that “Subject to subsection (6), no foreign fishing vessel licence shall be issued to any foreign fishing vessel unless there is in force with the Government of the flag state of the vessel, or with an association of which the owner or charterer is a member, an access agreement to which the Government of Barbados is a party.”

Regarding local fishing vessels licences, Section 11 (1) provides that no local fishing vessel shall be used for fishing or related activities in the waters of Barbados without a valid licence. Like Section 8, there is no mention of a requirement of insurance. However, Section 11(5) provides that “No local fishing vessel licence shall be issued or renewed in respect of any local fishing vessel unless

- (a) [...]
- (b) *the vessel has been registered in accordance with section 18 and such registration has not been cancelled or suspended under this Act;*
- (c) there is in existence a valid certificate of inspection issued in respect of the vessel under section 31; and [...].

Section 18(1), when dealing with the local fishing vessels to be registered, then provides that “Every owner of a local fishing vessel shall, before such vessel is used for commercial fishing, register the vessel in accordance with this section”. It is then provided at subsection (3) that a certificate of registration may be issued if “(b) there is in existence a valid certificate of inspection issued in respect of the vessel under section 31”. This section is very important as section 22(1) clearly states that “22. (1) No local fishing vessel shall be used for fishing or related activities in the waters of Barbados unless there is in existence a valid certificate of registration issued in respect of that fishing vessel in accordance with this Part.”

Similar importance to the certificate of registration is given to the certificate of inspection in section 31(1) which provides that “(1) No person shall put to sea any local fishing vessel unless there is in existence a valid certificate of inspection issued in respect of that local fishing vessel in accordance with this Part”.

A final provision of the Fisheries Act which is of relevance to this Report deals with the powers of authorized officers. In this respect, section 34(1) provides that: “For the purposes of enforcing this Act any authorized officer may, without warrant [...] (b) require to be produced, examine and take copies of any licence or other document required under this Act”. Failure to produce the required documentation may lead to enforcement actions.

### **7.5.2. Fisheries (Management) Regulations, 1998**

The Fisheries (Management) Regulations, 1998, enacted under the Fisheries Act (Cap 391) would not seem to have relevance in a possible compulsory insurance requirement, as any liability arising from the methods and traps mentioned therein will probably will be referred to the vessel of which they are considered to be an appurtenance.

## **7.6. LEGISLATION ON INSURANCE RELATED MATTERS**

### **7.6.1. Marine Insurance Act, 1979 (Cap 292)**

Heavily influenced by the Marine Insurance Act 1906 from the United Kingdom of Great Britain and Northern Ireland, the Marine Insurance Act provides the basic legal framework for the marine insurance business. Section 4 defines a contract of marine insurance as “a contract whereby the insurer undertakes to indemnify the assured in manner and to the extent thereby agreed against marine losses, that is to say, the losses incident to marine adventure”. This definition is crucial as it limits the scope of an insurance contract. As stated earlier, the Act then goes on to provide the legal framework for a marine insurance contract and, though it does not deal with the compulsory nature of any type of insurance, once adopted, the contracts for compulsory insurance in relation to fisheries will be subject to the provisions of this Act.

### **7.6.2. Insurance Act, 1997 (Cap 310) and Road Traffic Act, 1981 (Cap 295)**

The Insurance Act (Cap 310) aims to revise the law regulating the carrying out of insurance business in Barbados in order to strengthen the protection given to policy holders under the existing Act; to increase the capital and solvency requirements of insurance companies; to expand the existing regulatory framework to include the regulating of all insurance intermediaries; and to give effect to matters related thereto. As such it is of a very general nature and of limited assistance for the purposes of this Report. This notwithstanding, it is worth noting sections 156 and 157 which apply the Road Traffic Act (Cap 295) to motor vehicle insurance.

The Road Traffic Act (Cap 295), which aims to revise and consolidate the law relating to road traffic, may offer some insight into how insurance at a small scale may be introduced in a compulsory manner (Part IV of this Act deals with motor vehicle insurance).

Section 37(1) introduces compulsory insurance in relation to motor vehicles by providing that “[n]o person shall use or cause or permit any other person to use a motor vehicle on a public road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, *a policy of insurance or such security in respect of third-party risks as complies with the requirements of this Act.*” Subsection (2) then recognizes any contravention to the latter provision as an offence and imposes a penalty (which may include a fine, imprisonment, or both). Additionally, this subsection provides that any person committing an offence may be disqualified from holding or obtaining a driving licence under the Act for a period of 12 months from the date of the conviction. The Act then deals in detail with the requirements of compulsory insurance for motor vehicles.

### **7.6.3. Shipping Oil Pollution Act, 1994 (Cap 296A) SOPA**

Another Act of particular interest to this Report is the Shipping Oil Pollution Act (SOPA). The Shipping Oil Pollution Act (SOPA) is an Act concerning oil pollution of navigable waters by ships, providing for civil liability for oil pollution damage by ships and giving effect to certain international conventions relating to pollution of the sea. Although in its initial sections, this Act makes general provisions on oil pollution (e.g. prohibition of discharge of oil or oily mixtures from ships, discharge of certain oils from pipe-lines and exploration areas, discharge of certain ballast water into ports, provision of facilities in port for disposal of oil residues, etc), the most important part for the purpose of this Report is Part IV which deals with civil liability for oil pollution. This Part aims to implement the International Convention on Civil Liability for Oil Pollution Damage (CLC). In this respect it is important to mention that Barbados denounced the CLC 1969 and became a Party to the CLC 1992.

It is important to mention that this Part of the Act relates to oil pollution caused by tankers (Section 20(7)) and when the oil in question is “any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship” (Section 20(6)).

The Act provides in Section 20(1) that where oil is discharged or escapes from a ship, the shipowner will be liable for any damage caused outside the ship by contamination resulting from that discharge or escape, for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused, and for any damage so caused by any measures so taken. Provision is made, however, in subsection (5) for cases where a person is liable but where the incident was not caused by his fault. In such cases the *Contributory Negligence Act* (Cap 195) will apply.

The Act is then a bit conflicting with the CLCs. Whereas Section 20(1) excludes liability for the usual exceptions that are corollary to strict liability as per the CLC 1992, Section 23(1) links the right to limit liability to the person liable’s “actual fault or privity” (this being in line with the CLC 1969).



This is unfortunate as it lessens the circumstances in which the person liable can limit liability following a test that was heavily criticized for many years.

The Act then moves to the crucial point of compulsory insurance. It is important to note that the provisions of compulsory insurance of the CLC were used as models for most modern liability conventions and can thus offer some elements to consider in the introduction of compulsory insurance in fisheries. These provisions include, *inter alia*, the requirement and amount of compulsory insurance, the compulsory insurance certificate, the right of direct action, and a requirement of State Parties to monitor and enforce these provisions. The Act aims to implement the Convention's provisions on the above points.

Section 30(1) provides that no ship (whatever the flag) shall enter or leave a port in Barbados, or arrive at or leave a terminal in the territorial waters of Barbados unless there is in force a certificate showing that there is insurance in accordance with Article VII of the CLC. Section 30(2) imposes the same requirements for Barbadian ships in respect of other countries. Section 30(3) then confines the requirement of compulsory insurance to ships carrying in bulk a cargo of more than 2 000 tonnes of oil of a description specified in regulations made by the Minister.

Section 30(4) deals with the authorities authorized to issue the certificate and Section 30(5) empowers the Minister may make regulations providing:

- (a) that certificates issued or certified under the authority of a Contracting State in accordance with subsection (4)(c) shall be accepted for the purposes of that subsection and shall be regarded as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a Contracting State, and
- (b) that the country that may be so designated may be either
  - (i) the country in which the ship is registered; or
  - (ii) any country specified in the regulations for the purposes of this section.

The compulsory insurance certificate must be carried on board the ship and a copy deposited with the authorities which keep the ship's registry, or if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate (Section 30(6)). Furthermore, Section 30(7) provides that such certificate shall, on demand, be produced by the master to a customs officer or officer designated by the Minister, or where the ship is a Barbadian ship, to the Director, a Registrar, consular officer or inspector under the provisions of the Shipping Act.

Section 30(8) then provides that where a ship enters or leaves a port, attempts to enter or leave a port, arrives at or leaves a port, or attempts to arrive at or leave a terminal in contravention of subsection (1) or (2) the master or owner of the ship commits an offence and is liable on conviction to a fine of USD 150 000. Similarly, where a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (5) the master commits an offence and is liable on summary conviction to a fine of USD 1 000 (Section 30(9)). Additionally, a ship which attempts to leave a port in Barbados in contravention of section 30 may be detained as provided by section 303 of the Shipping Act (Section 30(10)).

Section 31(1) and (2) provide guidance to the Minister regarding the circumstances in which he may issue or refuse the certificate. Pursuant to these, subsection (3) then empowers the Minister to make regulations prescribing the fee to be paid on an application for a certificate to be issued by him under said section, and providing for the cancellation and delivery up of such a certificate in such circumstances as may be prescribed by the regulations (subsection (4) imposes a penalty in case of an offence relating to the latter).

Another important aspect of compulsory insurance is the right of direct action. In this respect, Section 32(1) provides that where there is an action for liability under the Act, "proceedings to enforce the claim in respect of the liability may be brought against the insurer who provided the insurance or other

security”. Section 32(2) then provides the defences which may be available to the insurer and Section 32(3) allows the insurer to “limit his liability in respect of claims made against him by virtue of this section ***in like manner and to the same extent as the owner may limit his liability*** but the insurer may do so whether or not the discharge or escape of oil resulted from anything done or omitted to be done by the owner as mentioned in subsection (3) of section 23”. This wording is different from that of the Convention and may lead to disputes in respect of the circumstances in which the insurer may actually limit liability.

## 7.7. INSTITUTIONAL FRAMEWORK

### 7.7.1. Legislation on Maritime Zones

The Government entities tasked with the implementation of the Barbadian legal framework vary depending on the legislation in question as well as on the relevant task. For example, under the **Marine Boundaries and Jurisdiction Act, 1978**, whilst all rights and jurisdiction recognized by the Act are vested in the Government of Barbados, there are several Government officers or entities that are given specific tasks or powers. For example, the Minister for External Affairs is, *inter alia*, empowered to determine – through an order – the outermost points of the Barbadian maritime zones, as well as to give directions respecting the disposal or release of any vessel, structure, equipment, device or thing that is ordered by a court to be forfeited under the Act. Furthermore, the Governor-General may – through an order – extend the application of any enactment to the Zone or any part thereof. The Cabinet, in turn, is empowered to grant permits to carry out activities in the exclusive economic zone, the territorial waters, or any designated part thereof, and may make regulations generally for carrying into effect the provisions of the Act. The Act then designates as marine conservation officers the following persons:

- (a) fisheries officers of the Ministry responsible for Fisheries;
- (b) members of the Defence Force of Barbados;
- (c) members of the Police Force;
- (d) officers of Customs;
- (e) officers of the Coast Guard, and
- (f) any other person approved by Cabinet.

### 7.7.2. Legislation on Coastal Zone Management

The implementation of the **Coastal Zone Management Act, 1998 (Cap 394)** is likewise delegated to several Government officers or entities. In this respect, it may be noted that the Director of the Coastal Zone Management Unit is charged with the general responsibility of enforcing the provisions of the Act and has the authority to enforce the coastal zone management related provisions of any Act affecting the conservation and management of coastal resources. He is tasked with preparing a draft coastal zone management plan and a draft order delimiting a coastal zone management area, and he may also, at any time thereafter, prepare and propose draft amendments to the management plan and is responsible for carrying out a regular full review of the plan. Moreover, the Director may in consultation with the National Conservation Commission, prepare for the approval of the Minister, draft orders designating any portions of the marine areas of Barbados as restricted areas. Other authorities are also allocated certain tasks in the implementation of the Act but these fall outside the scope of this Report.

### 7.7.3. Legislation on Shipping Related Matters

Legislation of shipping matters is found in the **Shipping Act, 1994 (Cap 296)**. This is an all embracing Act which covers a diversity of areas including the ship, the crew, passenger ships, safety, wrecks and salvage, regulation of diving operations and small commercial vessel operations, limitation and division of liability, conventions and legal proceedings, maritime liens and other matters. Of particular importance for the purposes of this Report are the parts dealing with ship registration and limitation of liability.

In general, the Minister responsible for Shipping may give the Director of Maritime Affairs or the Principal Registrar directions with respect to the policy to pursue in the administration of the Shipping Act. The Director of Maritime Affairs and the Principal Registrar (who may be the same person when the Principal Registrar has not been appointed) must keep registers of all vessels registered under the Act (before being registered under the Act, a vessel must be surveyed by a surveyor and tonnage ascertained in accordance with the tonnage regulations).

The Director must also keep a small vessel register for small commercial vessels and Caribbean trade ships which are below 150 tonnes but which otherwise qualify for registration under the Act (but this shall not include vessels which are under one ton unless they are engaged in the carriage of passengers and cargo for hire or reward pursuant to the Barbados Port Authority Act). The Director may also keep a provisional registry file for small vessels.

The Registrar is tasked by the Act with issuing a certificate of registry to Barbadian ships upon completion of the registration. The Registrar should also, before the first day of January in each year, collect an annual tonnage fee for each Barbadian ship. Likewise the Registrar must record mortgages in the order in time in which they are produced to him for that purpose.

The Minister responsible for Shipping may by regulations prescribe the fees to be charged in all matters relating to the registration of a ship.

Part VI of the Shipping Act deals with Limitation and Division of Liability and is devoted to setting out the legal framework for that purpose. Its main intention is to implement the provisions of the Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 and the 1976 Protocol relating thereto, as well as those of the Convention on Limitation of Limitation of Liability for Maritime Claims 1976 (the latter is of importance for the purposes of this Report). Accordingly, this Part does not make provision for the assignment of institutional responsibilities.

### 7.7.4. Legislation on Fisheries Related Matters

Insofar as legislation on fisheries matters, this Report considered the Fisheries Act, 1993 (Cap 391) and the Fisheries (Management) Regulations, 1998). Under the **Fisheries Act, 1993**, the Minister responsible for Fisheries is tasked with appointing a Fisheries Advisory Committee to advise him on several fishing related matters. Furthermore, the Minister is empowered to issue foreign fishing vessel licences, and, on the advice of the Chief Fisheries Officer, may grant permission for any vessel, organisation or person to undertake fisheries related research and survey operations in the waters of Barbados. The Minister may also designate in writing, any local scientific or academic institution as an approved local research institution. The Minister may also make regulations generally for the management and development of fisheries in the waters of Barbados.

Many of the functions of the Fisheries Act rest on the shoulders of the Chief Fisheries Officer (who may be assisted by Fisheries Officers, Fisheries Assistants and other officers), who is responsible for the management and development of fisheries in Barbados and for the administration of the Fisheries Act. The Chief Fisheries Officer, thus, must develop and keep under review schemes for the management and development of fisheries in the waters of Barbados.

Subject to the conditions established by the Fisheries Act, the Chief Fisheries Officer may also issue or renew sport fishing licences, local fishing vessel licences, commercial fisherman's licences, foreign fishing vessel licences, and certificates of inspection. The Chief Fisheries Officer is also empowered to grant permission to construct, alter or convert a fishing vessel. Moreover, the Chief Fisheries Officer is likewise tasked with the registration (or cancellation of the certificate of registration) of local fishing vessels and must keep registers in respect of local and foreign fishing vessels. The Chief Fisheries Officer may also prescribe the form and times for the supply such information regarding the amount and species of fish received, processed, marketed or distributed by any person engaged in the processing, marketing or distribution of fish or aquatic flora.

The Chief Fisheries Officer may also provide services for the proper operation of local fishing vessels, fishing ports and mooring places and other sectors of the fishing industry, and may likewise direct the manner in which any fishing vessel (together with its stores and cargo), and any vehicle, fishing gear, net or other fishing appliance, explosive or poison ordered to be forfeited under the Fisheries Act is to be sold or otherwise disposed of.

Regarding enforcement, the right to stop and board any local fishing vessel for the purpose of verifying that it holds a valid certificate of inspection and that the vessel and its equipment are being maintained in accordance with the prescribed standards is vested in the Chief Fisheries Officer, any fisheries officer designated by him in writing as an inspector or any officer or soldier of the Barbados Defence Force serving as a member of the Barbados Coast Guard. Other enforcement measures under the Act are delegated to authorised officers (i.e. any fisheries, customs or police officer or any officer or soldier of the Barbados Defence Force serving as a member of the Barbados Coast Guard).

For adjudication purposes, in normal circumstances, a person aggrieved by a decision of the Chief Fisheries Officer may appeal against it to a Judge in Chambers. However, where the grievance relates to the Chief Fisheries Officer attaching or varying special conditions to a fishing licence the aggrieved party may appeal against it to the Minister. Otherwise, any offence under the Act or the regulations, may be triable in any court of Barbados as if such offence had been committed in any place in Barbados within the local limits of the jurisdiction of such court.

Pursuant to the power to make regulations granted by section 46 of the Fisheries Act, the Minister responsible for Fisheries enacted the **Fisheries (Management) Regulations, 1998**. Under these Regulations the Minister is entitled to designate fishing methods which are prohibited, and species of fish which may not be harvested during the closed season and in the closed areas.

#### **7.7.5. Legislation on Insurance Related Matters**

Insofar as legislation on insurance related matters, this Report considered the Marine Insurance Act, 1979 (Cap 292) and the Insurance Act, 1997 (Cap 310). The Road Traffic Act, 1981 (Cap 295) and the Shipping Oil Pollution Act, 1994 (Cap 296A) SOPA were also considered, particularly insofar as they relate to a requirement of compulsory insurance.

The **Marine Insurance Act, 1979** is devoted to setting out the legal framework for marine insurance contracts. Accordingly, it does not make provision for the assignment of institutional responsibilities. Similarly, the **Insurance Act, 1997** is of a very general nature and of limited assistance for the purposes of this Report. It is however, important to note that the Supervisor of Insurance, subject to the Minister [**which Minister is not specified**], shall be responsible for the general administration of the Insurance Act. The Minister, in turn, is given a number of responsibilities, of which it is important to highlight the power to make regulations for giving effect to the Act. Besides the above, for the purposes of this Report, the important sections are sections 156 and 157 which apply the Road Traffic Act (Cap 295) to motor vehicle insurance.

Insofar as the **Road Traffic Act, 1981** is concerned, reference was made exclusively to Part IV which deals with motor vehicle insurance. The reason for this, as explained earlier, is that it may offer some insight into how insurance at a small scale may be introduced in a compulsory manner. In this respect, it is important to note that the implementation of this Part of the Act is largely delegated to the Licensing Authority and this is also true of Part II which deals with registration of motor vehicles.

Like other Acts discussed above, the **Shipping Oil Pollution Act, 1994** is a vast Act and extends to a number of areas that fall beyond the scope of this Report. Therefore, focus will be placed on Part IV which deals with Civil Liability for Oil Pollution as it includes basis of liability, limits of liability and, more importantly, a requirement of compulsory insurance (it is however important to highlight at this point that claims for oil pollution damage are subject to strict liability (i.e. not based on fault)). Part IV of the Act does not delegate many institutional obligations as it merely provides the framework (e.g. basis of liability, limits of liability, limitation of actions, etc) for the courts to settle actions relating to liability for oil pollution damage. Notwithstanding this, it is important to note sections 30-32 which deal specifically with the requirement of compulsory insurance.

Under Part IV of the Shipping Oil Pollution Act, the Minister responsible for Shipping may issue a certificate showing that there is a contract of insurance or other security in force in respect of a Barbadian ship or a ship registered in a foreign country which is not a Party to the International Convention on Civil Liability for Oil Pollution Damage, 1969 as amended by the 1992 Protocol thereto which satisfies the requirements of Article VII thereof. For this purpose, the Minister may make regulations prescribing the fee to be paid for the issue of the certificate, and providing for the cancellation and delivery up of such a certificate in such circumstances as he may prescribe in said regulations. Once he issues the certificate, the Minister must send copies to all Registrars, who need to make the copies available for public inspection. The Minister may also make regulations providing that certificates issued or certified under the authority of a State Party to the Convention shall be accepted and be regarded as having the same force as certificates issued or certified by him.

The compulsory insurance certificate must be carried on board the ship and shall, on demand, be produced by the master to a customs officer or officer designated by the Minister, or where the ship is a Barbadian ship, to the Director, a Registrar, consular officer or inspector under the provisions of the Shipping Act.

Regarding enforcement, unlike the Fisheries Act, which expressly empowers the Chief Fisheries Officer or any fisheries officer designated by him to “stop and board” any local fishing vessel for the purpose of verifying that it holds a valid certificate of inspection, the Shipping Oil Pollution Act does not assign that specific right to anyone and merely points out that no ship (local or foreign) shall enter or leave a port, or arrive at or leave a terminal in the territorial waters of Barbados unless there is in force a compulsory insurance certificate, and that no Barbadian ship shall enter or leave a port of another country, or arrive at or leave a terminal in the territorial sea of another country without said certificate. However, the Act provides that the compulsory insurance certificate must be carried on board the ship and shall, on demand, “be produced” by the master to a customs officer or officer designated by the Minister, or where the ship is a Barbadian ship, to the Director, a Registrar, consular officer or inspector under the provisions of the Shipping Act. It is thus not clear whether the aforesaid officers may “stop and board” a vessel (as stated in the Fisheries Act), or whether they may only go on board the vessel while it is within any port to require production of certificate.

## 7.8. OVERALL ASSESSMENT

There are several pieces of legislation that may be relevant for the introduction of a compulsory insurance requirement for the Barbados’ fishing fleet. In fact, some of the provisions already enacted provide support for such requirement. For example, as recorded earlier, Section 7(2) of the Shipping Act (Cap 296) provides that “[e]very Barbadian ship trading in any waters and every ship trading in or

from the waters of Barbados *shall provide evidence of financial responsibility against risks of damage to third parties in such a manner as may be prescribed.*” Provided that this provision applies to fishing vessels, such evidence could be in the form of an insurance policy.

However, bearing in mind that there is no express reference to compulsory insurance for fishing vessels, what could be the best entry point for such requirement? In this respect, it may be important to look at the Fisheries Act (Cap 391), Section 22(1) of which provides that “[n]o local fishing vessel shall be used for fishing or related activities in the waters of Barbados unless there is in existence a valid certificate of registration issued in respect of that fishing vessel in accordance with this Part.” Similarly, Section 11(5) of the Fisheries Act provides that “No local fishing vessel licence shall be issued or renewed in respect of any local fishing vessel unless

- (a) [...]
- (b) *the vessel has been registered in accordance with section 18 and such registration has not been cancelled or suspended under this Act;*
- (c) there is in existence a valid certificate of inspection issued in respect of the vessel under section 31; and [...].

Noting the requirement of registration for a vessel to be used for fishing or related activities in the waters of Barbados, and the further requirement of a licence for that purpose (which may be relevant in cases of vessels that are not subject to registration), it seems reasonable that the entry point for a requirement of compulsory insurance may be inserted as a requirement for the issue of the licence (similar to the required certificate of inspection).

The fact that some fishing vessels are very small should not be a deterrent. The introduction of compulsory insurance for fishing vessels could follow a similar approach of the Road Traffic Act (Cap 295) in relation to motor vehicles.

Insofar as the limit of compulsory insurance is concerned, this would certainly be subject to debate due to the potential financial implications. However, there are a few things that could be borne in mind in this respect.

1. Implementing the Convention on Limitation of Liability for Maritime Claims, 1976 the Shipping Act allows the shipowner to cap his liability to the following amounts:
  - (a) in respect of claims for loss of life or personal injury: 333 000 Units of Account for a ship with a tonnage not exceeding 500 tonnes (plus additional sums for each additional ton).
  - (b) In respect of any other claims: 167 000 Units of Account for a ship with a tonnage not exceeding 500 tonnes (plus additional sums for each additional ton).
2. To protect smaller vessels, Section 5(1) of Part II of Schedule II of the Act provides that in relation to the limit of liability shall be modified so that:
  - (a) paragraph (a)(i) referred to 166 667 Units of Account; and
  - (b) paragraph (b)(i) referred to 83 333 Units of Account
3. However, in so far as claims for loss of life or personal injury of a person who is on board or employed under a contract of service governed by the laws of Barbados, limitation of liability is not allowed and, therefore, the amount of compulsory insurance may be higher than the limits stated above.

## 8. DOMINICA

### 8.1. INTRODUCTION

The analysis of the Legal Framework of Dominica covers legislation governing the maritime zones wherein the State enjoys sovereignty, sovereign rights, or jurisdiction in relation to fishing related matters (*i.e. Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Act, 1981*), legislation on shipping related matters – including *inter alia* ship registration (*i.e. the Registration of Ships (Amendment) Act, 1996*) and limitation of liability (*i.e. the International Maritime (Amendment) Act, 2002*), legislation on fisheries matters (*i.e. the Fisheries Act, 1987*) as well as legislation on insurance related matters (*i.e. the Insurance Act, 2012*). In this category, the *Motor Vehicles Insurance (Third-Party Risks) Act, 1988* was considered, particularly insofar as it relates to a requirement of compulsory insurance.

### 8.2. LEGISLATION ON MARITIME ZONES

#### 8.2.1. Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Act, 1981

The Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Act, 1981 is an Act to provide for the establishment of marine boundaries and jurisdiction, particularly in relation to the EEZ. This is important because beyond the territorial sea (which is subject to the sovereignty of the State), there is a possibility of claiming an EEZ where specific sovereign rights and limited jurisdiction is recognized by the international law of the sea. Additionally, the Act establishes the fishery zone, having as its inner limit the seaward limit of the territorial waters and extending up to 200 nautical miles from the baselines (Section 6). In the fishery zone, Dominica claims sovereign rights and exclusive authority to explore and exploit, conserve and manage the fishery resources of the superjacent waters, and the seabed and subsoil therein (Section 9). However, there is no actual regulation of fisheries in the Act, as Section 12 states that the Government of Dominica will pass further legislation for the implementation of the provisions of the Act.

#### 8.2.2. Fisheries Act, 1987

Fishing in the fishery zone is regulated by the Fisheries Act, 1987, including the permission to fish, the form and content of the licence, as well as the variation, revocation or suspension of the licence to fish. Likewise, the Fisheries Act provides for the responsibility of foreign States to take necessary measures to ensure compliance by their vessels with the laws relating to fishing.

### 8.3. LEGISLATION ON SHIPPING RELATED MATTERS

#### 8.3.1. International Maritime (Amendment) Act, 2002

The International Maritime (Amendment) Act is an all-encompassing Act dealing, *inter alia*, with ships, crews, safety at sea, limitation of liability and with matters consequential, related or incidental thereto. It is thus an important Act for the purposes of this Report. Chapter 8 of the Act provides a number of definitions that are important for the topic subject of this Report. Amongst such definitions it is important to mention the following:

[...]

“vessel” means a vessel registered under this Act;

“fishing vessel” means a vessel used for catching fish and other living creatures at sea;

[...]

Small vessels are defined under Chapter 2 “Documentation and Identification of Vessels” as follows:

Section 57(3):

For the purpose of this section “small vessels” include:

- (a) commercial vessels under 500 tonnes and over 24 meters in length;
- (b) commercial vessels under 24 meters; and
- (c) pleasure vessels under 24 meters.

Upon reading the above definitions it is clear that the International Maritime (Amendment) Act applies to fishing vessels (at least in some respects). In fact Section 30(1) provides that “[a] yacht, *fishing vessel*, or vessel required to comply with the International Convention on Load Lines 1966 or with any Regulations made by the Minister [...] is eligible to be documented under the provisions of this Chapter”.

Section 11(1) provides that the Maritime Administrator is authorized to issue all licences, certificates, or other documents for officers and ship’s personnel on vessels of Dominica necessary or proper for carrying out the purposes of this. Likewise, according to Section 12, the Maritime Administrator may suspend or revoke any licence, certificate, permit or document issued.

Of particular importance is the requirement of registration. In this respect, Section 59(1) provides that from the time of issuance of a Certificate of Registry and until its expiration, termination, revocation or cancellation, whichever first occurs, the vessel shall be granted and shall enjoy the right to fly the Flag of Dominica exclusively. Section 22 provides that in order to promote the safety of life and property at sea, vessels registered shall be required to undergo inspection and shall at all times carry on board such *proof of inspection* as may be required by Law. However, although proof of inspection is required, unlike other countries (e.g. Barbados), Dominica does not expressly require its ships, nor ships trading in its waters *to provide evidence of financial responsibility against risks of damage to third parties*.

Another important topic for the purpose of compulsory insurance, at least in so far as determining the amount of possible financial exposure of fisherfolk in relation to damages caused by their activities, is that of limitation of liability. In this respect, Chapter 5 of the Act deals with Limitation of Liability.

Dominica is a State Party to the Convention on Limitation of Liability for Maritime Claims, 1976 (although this fact is not mentioned in the International Maritime (Amendment) Act). This Convention, together with the 1996 Protocol thereto (to which Dominica is not yet a party) set out the legal framework for the exercise of the right to limit liability for maritime claims. Accordingly, Chapter 5 incorporates and transposes the provisions of the 1976 Convention. In this respect, it is noteworthy that even the limits provided in the Act are still high for the smallest vessels leading to a high potential financial exposure. It may be noted that Section 133 provides that:

1. The limits of liability for claims other than those mentioned in Section 134, arising on any distinct occasion, shall be calculated as follows
  - (a) in respect of claims for loss of life or personal injury
    - (i) 333 000 Units of Account for a ship with a tonnage not exceeding 500 tonnes.
    - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in clause (i)
      - (A) for each ton from 501 to 3 000 tonnes, 500 Units of Account;
      - (B) for each ton from 3 001 to 30 000 tonnes, 333 Units of Account;
      - (C) for each ton from 30 001 to 70 000 tonnes, 250 Units of Account; and
      - (D) for each ton in excess of 70 000 tonnes, 167 Units of Account;
  - (b) in respect of any other claims,
    - (i) 167 000 Units of Account for a ship with a tonnage not exceeding 500 tonnes,
    - (ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in clause (i) of this Paragraph:
      - (A) for each ton from 501 to 30 000 tonnes, 167 Units of Account;
      - (B) for each ton from 30 001 to 70 000 tonnes, 125 Units of Account; and
      - (C) for each ton in excess of 70 000 tonnes, 83 Units of Account.



In this respect, it is important to note that, unlike other countries subject of this Report (e.g. Barbados), Dominica has not exercised the right granted by Article 15(2) of the Convention to protect vessels of less than 300 tonnes. This is very important as it leaves the owners of very small fishing vessels exposed to the same limits of liability as the owners of larger commercial vessels.

On another point, the question as to whether a fishing vessel is a “ship” for the purposes of the chapter dealing with limitation of liability, which is raised in other parts of this Report, would not seem to arise in the case of Dominica as the chapter in question does not include a definition of “ship”, leaving the term to be interpreted in a liberal manner. This assertion may be supported by the fact that when other chapters of the Act intend to limit or clarify the scope of the term “ship”, they provide an express definition (e.g. Chapter 4 dealing with Carriage (of Goods and Passengers) by Sea).

Accordingly, Chapter 5 of the Act, dealing with limitation of liability for maritime claims, would also apply to fishing vessels – even the small ones (particularly considering that, as stated above, Dominica has not protected small vessels from the higher limits of liability established by the Convention).

### **8.3.2.Registration of Ships (Amendment) Act, 1996**

The Registration of Ships (Amendment) Act, 1996 defines “ship” as “every description of vessel used in navigation not propelled by oars”.

Section 4(1) provides for the obligation of registration of vessels of Dominica. A ship required by the Act to be registered may be detained until the master of the ship, if so required, produces the certificate of registration of the ship. Section 4(2) provides that a ship so not registered shall not be recognised as a ship of Dominica. In this respect, it is important to highlight that ships not exceeding 10 tonnes employed solely in navigation on the rivers or coasts of Dominica and **ships not exceeding 15 tonnes and not having a whole or fixed deck and employed solely in fishing or trading coastwise are exempted from registration** (Section 5). In the situation of Dominica, this means that nearly all fishing vessels are exempted from registration under this Act.

Upon completion of the registration of a ship, a certificate of registration shall be granted (Section 16). It is also noteworthy that Section 26 provides that the Merchant Shipping Act 1894 of the United Kingdom shall apply to ships of Dominica in all other matters save registration.

## **8.4. LEGISLATION ON FISHERIES RELATED MATTERS**

### **8.4.1.Fisheries Act, 1987**

Dominica Fisheries Legislation is contained in *An Act to make provision for the promotion and regulation of fishing in the fisheries waters of Dominica and for matters incidental thereto and connected therewith* (Fisheries Act). The Act defines a “fishing vessel” as “any vessel used for commercial fishing or related activities and includes sport fishing”, while a “foreign fishing vessel” is “any fishing vessel other than a local fishing vessel”.

It is important to note that Section 6(g) states that the Minister may enter into arrangements or agreements with other countries in the region or with any competent regional organization, providing for “co-operative measures as appropriate including measures for promoting the welfare of fishermen and the insurance of fishing vessels and gear.”

Regarding foreign fishing vessels licences, the Act contains no mention of a requirement of Insurance. In fact, Section 8(1) the only limitation on the issue of a licence by providing that “no foreign vessel shall be used for fishing or related activities in the fisheries waters without a valid foreign fishing

licence issued under this section”. This does not apply to foreign fishing vessels used purely for the purpose of sports fishing. According to Section 8(3), the application for the foreign fishing vessel licence shall be made to the Minister or to the competent regional organization authorized to issue fishing licences. Additionally, Section 7(3) imposes that agreements entered into with other States or association representing foreign fishing vessels shall include a provision establishing the responsibility of the foreign States or association to take necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in fisheries waters.

Regarding local fishing vessels licences, section 11(1) provides that no local fishing vessel shall be used for fishing or related activities in the waters of Dominica without a valid licence. Like section 8 there is no mention of a requirement of insurance. However, Section 11(5) provides that “No application for a local fishing vessel licence shall be refused except on any of the following grounds:

[...]

(b) *that the vessel in respect of which the application is made does not have a valid certificate of inspection where so required under the laws governing merchant shipping, or is not in compliance with Regulations prescribed under section 38 relating to the safety of the vessel”.*

Section 11(6) provides that “Where a local fishing vessel is used in contravention of subsection (1), or any condition of the local fishing licence, the master, owner and charterer of that vessel is each liable on summary conviction to a fine of ten thousand dollars and in default of payment thereof to imprisonment for twelve months.”

Part V of the Fisheries Act, which deals with enforcement, is of relevance to this Report. In this respect, Section 27 (1) provides that: “For the purposes of enforcing this Act, any authorized officer may, without warrant (a) stop, board and search any foreign vessel in fisheries waters and any local fishing vessel in outside the fisheries waters and stop and search any vehicle; (b) require to be produced, examine and take copies of any licence *or other document required under this Act*” (these documents could easily include a certificate of compulsory insurance if required). Failure to produce the required documentation may lead to enforcement actions.

## **8.5. LEGISLATION ON INSURANCE RELATED MATTERS**

### **8.5.1. Insurance Act, 2012 and Motor Vehicles Insurance (Third-Party Risks) Act, 1988**

The Insurance Act aims to revise the law regulating the carrying on of insurance business in Dominica in order to strengthen the protection given to policy holders under the existing Act and to regulate the operation of pension funds plans and related matters. As such it is of a very general nature and of limited assistance for the purposes of this Report. It is worth noting Schedule 1, Sections 1(2) which states that “[i]f the principal object of a contract of insurance is to insure a person against risks of a kind covered by marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, a registered insurance company shall not for the purpose of this Act be treated as carrying on ordinary long-term insurance business by reason only of the incidental inclusion in the contract of a provision whereby the registered insurance company assumes liability against the happening of personal accidents, whether fatal or not”.

The Motor Vehicles Insurance (Third-Party Risks) Act, which makes provision for the protection of third parties against risks arising out of the use of motor vehicles, may offer some insight into how insurance at a small scale may be introduced in a compulsory manner. Section 3(1) introduces compulsory insurance in relation to motor vehicles by providing that “it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a public road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a *policy of insurance in respect of third-party risks as complies with the requirements of this Act*”. Subsection (2) then recognizes any contravention to the latter provision as an offence and imposes a penalty (which may include a fine or imprisonment). Additionally, this subsection provides

that any person committing an offence may be disqualified from holding or obtaining a driving licence under the Act for a period of 12 months from the date of the conviction. The Act then deals in detail with the requirements of compulsory insurance for motor vehicles.

### **8.5.2. International Maritime (Amendment) Act, 2002**

Apart from the provisions mentioned above, it is noteworthy that Chapter 6 of the International Maritime (Amendment) Act gives force of law in Dominica to the provisions of the International Convention of 1969 on Civil Liability for Oil Pollution Damage, as amended by the Protocol of 1992 (1992 Civil Liability Convention). According to Section 145, an action for compensation may be brought before the High Court of Dominica if pollution damage resulting from the incident has been sustained in Dominica, including its territorial sea or EEZ, or if measures have been taken to prevent or minimize such damage.

Of particular importance is Section 148(1), which requires the Maritime Administrator to issue certificates of insurance referred to in Article VII.2 of the 1992 Civil Liability Convention with respect to vessels registered in Dominica. This also applies to ships flying the flag of a State not Party to the Convention that enter or leave a port in the territory of Dominica. In this regard, compulsory insurance must be obtained up to the limits established in the 1992 Civil Liability Convention.

According to Section 157 of the Act, in the event of any casualty involving a vessel of Dominica where there is loss of life or loss or damage of property estimated to be in excess of fifty thousand dollars (USD 50 000), the Master shall immediately forward a report thereon to the Maritime Administrator. Where there is a failure to execute and file a report as required, the Master and vessel shall each be liable to a fine of five thousand dollars (USD 5 000) upon notice from the Maritime Administrator.

### **8.5.3. Marine Safety Circular CD-MSC 08-08 Rev01**

The Office of the Maritime Administrator has issued a circular on the Certification Requirements in respect to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention). The Circular applies to owners and operators of all vessels of the 1 000 gross tonnes or over flying under the Flag of Dominica and calling at a port or arriving at or leaving an offshore facility in the territorial waters of a State Party to the Bunker Convention.

The Bunker Convention defines “ship” as “*any seagoing vessel and seaborne craft, of any type whatsoever*”. The broad scope of this definition covers fishing vessels. Although no limits are specified in the circular, the insurance would match those of the Convention on Limitation of Liability for Maritime Claims, 1976, which in the case of Dominica have been reproduced in Section 133 of the International Maritime (Amendment) Act, 2002.

It is noteworthy that Dominica has not yet ratified the Bunker Convention, but in order to assist all Dominica registered vessels which may be affected by the Convention, it has contacted a number of other States Parties to the Convention to issue the relevant compulsory insurance certificates in respect of civil liability for bunker oil pollution damage for vessels of Dominica.

Shipowners of Dominica and operators are invited to apply to some States Parties to the Convention for the issuance of a compulsory insurance certificates in respect of civil liability for bunker oil pollution damage.<sup>3</sup>

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<sup>3</sup> The States listed in the Marine Safety Circular CD-MSC 08-08 Rev01 for this purpose include: Albania; Antigua and Barbuda; Australia; Austria; Azerbaijan; Bahamas; Barbados; Belgium; Belize; Bulgaria; Canada; Cayman Islands; China; China, Hong Kong SAR; China, Macao SAR; Cook Islands; Croatia; Cyprus; Czechia; Denmark; Egypt; Estonia; Ethiopia; France; Finland; Germany; Gibraltar; Greece; Hungary; Ireland; Isle of

## 8.6. INSTITUTIONAL FRAMEWORK

### 8.6.1. Legislation on Maritime Zones

The Government entities tasked with the implementation of the legal framework of Dominica vary depending on the legislation in question as well as on the relevant task. For example, under the **Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Act, 1981**, all rights and jurisdiction recognized by the Act are vested in the Government of Dominica. The Government shall negotiate the boundary lines of the territorial sea and the EEZ with the States adjacent or opposite.

### 8.6.2. Legislation on Shipping Related Matters

Legislation of shipping matters is found in the **International Maritime (Amendment) Act, 2002**. This is an all embracing Act which covers a diversity of areas including the ship, the crew, documentation and identification of vessels, ship mortgages and maritime liens, carriage of goods and passengers by sea, wrecks and salvage, limitation of liability, civil liability for oil pollution damage and other matters. Of particular importance for the purposes of this Report are the parts dealing with ship registration and limitation of liability.

In general, the Maritime Administration (MARAD) is subject to the direction of the Minister with the responsibility for Economic Planning. The Minister may make rules and regulations for the better carrying out of the provisions of the Act. He shall appoint a Maritime Administrator, who is tasked with the administration of all matters pertaining to vessels of Dominica engaged in foreign trade, with ensuring the seaworthiness of ships of Dominica, and with the establishment of a proper manning conditions on board. He is also authorized to issue, suspend or revoke licenses, certificates, or other documents for officers and ship's personnel on vessels of Dominica necessary or proper for carrying out the purposes of the Act.

The Maritime Administrator may, with the approval of the Minister, appoint Deputy Administrators and Assistant Administrators as may be necessary for carrying out the purpose of the Act. The Maritime Administrator, may from time to time appoint one or more Agents to act on his behalf in connection with the registration and documentation of vessels and the recording of instruments in relation thereto. The Maritime Administrator, Deputy Administrator of Maritime Affairs, each Assistant Administrator and each Special Agent may administer all oaths, take all acknowledgments and make all proofs of due execution required by the Act either in or outside of Dominica.

The Minister may by regulations prescribe the fees to be charged in all matters relating to the registration of a ship. The Maritime Administrator may, upon payment of the prescribed fees, issue a Permanent Certificate of Registry.

Chapter 5 of the International Maritime (Amendment) Act, 2002 deals with Limitation of Liability and is devoted to setting out the legal framework for that purpose. Its main intention is to implement the provisions of the Convention on Limitation of Liability for Maritime Claims 1976. This chapter does not make provision for the assignment of institutional responsibilities.

The registration procedure is complemented by the **Registration of Ships (Amendment) Act, 1996**. The Chief Officers of Customs at any port of Dominica act as a Registrar and shall keep a Register

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Man; Italy; Jamaica; Jordan; Kiribati; Latvia; Liberia; Lithuania; Luxembourg; Malaysia; Malta; Marshall Islands; Mongolia; Montenegro; Morocco; Netherlands; Nigeria; Niue; Norway; Palau; Panama; Poland; Republic of Korea; Romania; Russian Federation; Saint Kitts and Nevis; Saint Vincent and the Grenadines; Samoa; Serbia; Sierra Leone; Singapore; Slovenia; Spain; Togo; Tonga; Tunisia; Tuvalu; United Kingdom of Great Britain and Northern Ireland; Vanuatu; Viet Nam.

Book. The surveyor shall survey the ships before registration and grant the certificate specifying ship's tonnage and build. Such certificate shall be delivered to the Registrar before registration. The Registrar is tasked by the Act with issuing a certificate of registry to ships of Dominica upon completion of the registration.

The Minister [**which Minister is not specified, as the original definition referring to the Minister responsible for Trade was deleted by the Registration of Ships (Amendment) Act**] may exempt any class of ships from all or any of the requirements of registration.

### **8.6.3. Legislation on Fisheries Related Matters**

The implementation of the **Fisheries Act, 1987** is delegated to several Government officers or entities. In this respect, it may be noted that the Minister responsible for Fisheries shall promote the management and development of fisheries, so as to ensure the optimum utilisation of the fisheries resources in the fisheries waters for the benefit of Dominica. For this purpose, the Minister may appoint a Chief Fisheries Officer and such other Fisheries Officer, Assistant Fisheries Officers and other officers as may be necessary. Under the Act, the Minister responsible for Fisheries may also appoint a Fisheries Advisory Committee to advice on the management and development of fisheries.

The Minister is empowered to enter into arrangements or agreements with other countries in the region or with any regional organization, providing for, *inter alia*, the harmonisation of systems for the collection of statistics, the harmonisation of licensing procedure and conditions in respect of foreign fishing vessels and schemes for the issuance of fishing licenses in respect of foreign fishing vessels. For the purpose of giving effect to any arrangement or agreement, the Minister may authorise any competent regional organisation to issue fishing licenses in respect of foreign fishing vessels or exempt from the requirement of foreign fishing licence any foreign fishing vessel holding a valid regional fishing licence issued by a competent regional organisation.

Subject to the conditions established by the Fisheries Act, the Minister may also issue licences for foreign and to local fishing vessels and cancel or suspend a fishing licence. Moreover, the Minister may specify general conditions additional to those prescribed by the Act to which all fishing licenses or any category of fishing licences shall be subject, including conditions relating to open and closed seasons, prohibited fishing areas, minimum mesh sizes and minimum species sizes.

The Minister may declare any area of the fishery waters to be a fishing priority area, where he considers that special measures are necessary to ensure that authorised fishing within the area is not impeded or otherwise interfered with. The Minister is also empowered to designate, by Order, any area of the fishery waters and, as appropriate, any adjacent or surrounding land, to be a marine reserve where he considers that special measures are necessary. Permissions for any vessel or person to undertake research into fisheries in the fishery waters are granted by the Minister.

The Minister may designate an area as a local fisheries management area and designate any local authority, fishermen's co-operative or fishermen's association or other appropriate body representing fishermen in the area as the Local Fisheries Management Authority for that area.

The Chief Fisheries Officer is tasked with preparing and keeping under review a plan for the management and development of fisheries in the fisheries waters, which shall be approved by the Minister. He is also responsible for the approval of the fisheries research plans. He shall, to the extent he considers it practicable, provide to any Local Fisheries Management Authority, such assistance as may be reasonably necessary for the performance of its functions.

Regarding enforcement, the right to stop and board any foreign fishing vessel in fishery waters or any local fishing vessel in or outside the fishery waters for the purpose of verifying that it holds a licence

and that the vessel and its equipment are being maintained in accordance with the prescribed standards is vested in the authorised officers designated by the Minister by Notice published in the Gazette.

Any offence under the Act or the regulations, may be triable in any court of Dominica as if such offence had been committed in any place in Dominica within the local limits of the jurisdiction of such court. The Minister may where he is satisfied that any person has committed an offence against the Act or the regulations, compound the offence by accepting on behalf of the Government from such person a sum of money not exceeding the maximum fine specified for that offence. The compounding of an offence shall be notified in writing under the signature of both parties to the appropriate Magistrate's Court.

#### **8.6.4. Legislation on Insurance Related Matters**

Insofar as legislation on insurance related matters, this Report considered the Insurance Act, 2012, the International Maritime (Amendment) Act, 2002 and the Marine Safety Circular CD-MSC 08-08 Rev01. The Motor Vehicles Insurance (Third-Party Risks) Act, 1988 was also considered, particularly insofar as it relates to a requirement of compulsory insurance.

The **Insurance Act, 2012** is of a very general nature and of limited assistance for the purposes of this Report. It is however, important to note that the Director of the Financial Services Unit is the Registrar of Insurance, who is responsible for the general administration of the Insurance Act. In the exercise of the powers conferred on the Registrar and in the performance of his duties, the Registrar shall comply with any special direction given to him by the Minister (responsible for Finance). The Minister is given a number of responsibilities, of which it is important to highlight the power to make regulations for giving effect to the Act.

Insofar as the **Motor Vehicles Insurance (Third-Party Risks) Act, 1988** is concerned, reference was made exclusively to Section 3 which deals with users of motor vehicles to be insured or secured against third-party risks. The reason for this, as explained earlier, is that it may offer some insight into how insurance at a small scale may be introduced in a compulsory manner. In this respect, it is important to note that the implementation of this Part of the Act is largely delegated to the Licensing Authority. The Minister responsible for Finance may make regulations for the purpose of carrying the Act into effect.

Like other Acts discussed above, the **International Maritime (Amendment) Act, 2002** is a vast Act and extends to a number of areas that fall beyond the scope of this Report. Therefore, focus will be placed on Chapter 6 which deals with Civil Liability for Oil Pollution Damage as it includes a requirement of compulsory insurance (it is however important to highlight at this point that claims for oil pollution damage are subject to strict liability (i.e. not based on fault)). Chapter 6 of the Act does not delegate many institutional obligations as it merely provides the framework for the High Court of Dominica to settle actions relating to liability for oil pollution damage. Notwithstanding this, it is important to note section 148 which deals specifically with the requirement of compulsory insurance. Under that section, the Maritime Administrator may issue a certificate of insurance referred to in Article VII.2 of the 1992 Civil Liability Convention. For this purpose, the Marine Administrator shall determine the procedure for the issue of certificates and their validity.

Regarding enforcement, the International Maritime (Amendment) Act, 2002 empowers the authorised officers designated by the Minister to verify that any ship (local or foreign) entering or leaving a port of Dominica holds the insurance certificate in accordance with Article VII.11 of the 1992 Civil Liability Convention.

The **Marine Safety Circular CD-MSC 08-08 Rev01** is of limited assistance in this regard since no function distribution is contemplated.

## 8.7. OVERALL ASSESSMENT

There are several pieces of legislation that may be relevant for the introduction of a compulsory insurance requirement.

Bearing in mind that there is no express reference to compulsory insurance for fishing vessels, what could be the best entry point for such requirement? In this respect, it may be important to look at the Fisheries Act, 1987, Section 8(1) which provides that “no foreign vessel shall be used for fishing or related activities in the fisheries waters without a valid foreign fishing licence issued under this section”.

Of particular importance is the requirement of registration. In this respect, Section 59(1) provides that from the time of issuance of a Certificate of Registry and until its expiration, termination, revocation or cancellation, whichever first occurs, the vessel shall be granted and shall enjoy the right to fly the Flag of Dominica exclusively. Section 22 provides that in order to promote the safety of life and property at sea, vessels registered shall be required to undergo inspection and shall at all times carry on board such proof of inspection as may be required by Law.

Noting the requirement of registration for a vessel to enjoy the right to fly the Flag of Dominica, and the further requirement to undergo inspection and carry on board proof of inspection, it seems reasonable that the entry point for a requirement of compulsory insurance may be inserted as a requirement for the issue of the licence (similar to the required proof of inspection).

The fact that some fishing vessels are very small should not be a deterrent. The introduction of compulsory insurance for fishing vessels could follow a similar approach of the Motor Vehicles Insurance (Third-Party Risks) Act, 1988 in relation to motor vehicles.

Insofar as the limit of compulsory insurance is concerned, this would certainly be subject to debate due to the potential financial implications. However, there are a few things that could be borne in mind in this respect.

1. The International Maritime (Amendment) Act reproduces the limits of the Convention on Limitation of Liability for Maritime Claims, 1976 (to which Dominica is a State Party) and allows the shipowner to cap his liability to the following amounts:
  - (a) In respect of claims for loss of life or personal injury: 333 000 Units of Account for a ship with a tonnage not exceeding 500 tonnes (plus additional sums for each additional ton).
  - (b) In respect of any other claims: 167 000 Units of Account for a ship with a tonnage not exceeding 500 tonnes (plus additional sums for each additional ton).
2. Dominica has not exercised the right granted by Article 15(2) of the Convention on Limitation of Liability for Maritime Claims, 1976 to protect vessels of less than 300 tonnes. This leaves the owners of very small fishing vessels exposed to the same limits of liability as the owners of larger commercial vessels.

In light of the above, besides considering inserting the compulsory insurance requirement as a requirement for issuing a fishing licence, Dominica may also consider the possibility of making a declaration in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976 to limit the liability of small fishing vessels.

## 9. SAINT KITTS AND NEVIS

### 9.1. INTRODUCTION

The analysis of the Legal Framework of Saint Christopher and Nevis covers legislation governing the maritime zones wherein the State enjoys sovereignty, sovereign rights, or jurisdiction in relation to fishing related matters (*i.e. the Maritime Areas Act, 1984*), legislation on shipping related matters – including *inter alia* ship registration and limitation of liability (*i.e. the Merchant Shipping Act, 2002*), legislation on fisheries matters (*i.e. the Fisheries, Aquaculture and Marine Resources Act, 2016* and *Fisheries Regulations, 1995*) as well as legislation on insurance related matters (*i.e. the Insurance Act, 2009*). In this category, the *Motor Vehicles Insurance (Third-Party Risks) Act* and the *Marine Pollution Management Act, 2002* were considered, particularly insofar as they relate to a requirement of compulsory insurance).

### 9.2. LEGISLATION ON MARITIME ZONES

#### 9.2.1. Maritime Areas Act, 1984

The Maritime Areas Act, 1984 is an Act to make provision with respect to the territorial sea and the continental shelf, as well as to establish a contiguous zone and an EEZ adjacent to and beyond the territorial sea. Thus, the Maritime Areas Act establishes an EEZ of 200 nautical miles (Section 8). This is important because in the EEZ a State enjoys specific sovereign rights and limited jurisdiction as recognized by the international law of the sea. Accordingly, in respect of its EEZ, Saint Christopher and Nevis claims, *inter alia*, sovereign rights for the purpose of the exploration for and the exploitation, conservation and management of resources of the waters superjacent to the seabed and subsoil (Section 8).

The Act prohibits any person exploring and exploiting the resources (which includes fisheries resources) within the limits of the EEZ (Section 14), and to prevent any violations Section 23 provides that where an authorized person has reasonable cause to believe and believes that an offence has been committed against Section 14, he may exercise several powers, including:

- (a) within the maritime areas of Saint Kitts and Nevis, stop, board, inspect and search any vessel, or enter, inspect and search any installation, which he has reasonable cause to believe is being used for or in connection with the commission of the offence;
- (b) arrest with or without a warrant, any person on board the vessel, or on the installation, referred to in paragraph (a), or found elsewhere in Saint Kitts and Nevis, whom he has reasonable cause to believe has committed an offence against that section;
- (c) detain the vessel, referred to in paragraph (a), if he has reasonable cause to believe that an offence against that section has been committed by the owner or master of the vessel; and [...]

Despite claiming sovereign rights over the exploration and exploitation of the fisheries resources of the EEZ, the Act itself does not regulate fishing. It provides, however, that the Minister may make regulations for carrying out or giving effect to the Act, including those regulating the exploration and exploitation of the EEZ for economic purposes (Section 29). Fishing in the EEZ is then regulated by Part 8 of the Fisheries, Aquaculture and Marine Resources Act, 2016, including the license to fish, the form and content of the license, as well as the variation, revocation or suspension of the permit to fish.



### 9.3. LEGISLATION ON SHIPPING RELATED MATTERS

#### 9.3.1. Merchant Shipping Act, 2002

The Merchant Shipping Act, 2002 is an Act to repeal and replace the Merchant Shipping Act, 1985, so as to streamline and update the law relating to merchant shipping and to provide for related or incidental matters. Accordingly, it is an all-encompassing Act dealing with ships, crews, safety at sea and with matters consequential, related or incidental thereto. It is thus an important Act for the purposes of this Report. Section 2 of Part I of the Act provides a number of definitions that are important for the topic subject of this Report. Amongst such definitions it is important to mention the following:

[...]

“fishing vessel” means a vessel for the time being used or, intended to be used, for or in connection with fishing for sea fish other than a vessel used or intended to be used for fishing otherwise than for profit or a vessel for the time being used or intended to be used wholly for the purpose of conveying persons wishing to fish for pleasure;

[...]

“ship” includes every description of vessel used in navigation;

[...]

“small vessels” means a ship less than twenty-four metres in length;

[...]

“Saint Christopher and Nevis ship” means a ship registered in the Federation under this Act, and “Saint Christopher and Nevis vessel” and “Saint Christopher and Nevis fishing vessel” shall be construed accordingly; [...]

Upon reading the above definitions, it is clear that the Merchant Shipping Act applies to fishing vessels (at least in some respects). Of particular importance is the requirement of registration. Section 3(1) provides that a ship shall be a Saint Christopher and Nevis ship if the ship is registered in Saint Christopher and Nevis under Part II of the Act. Additionally, a ship registered in Saint Christopher and Nevis under Part II of the Merchant Shipping Act, 1985 shall be deemed to be a ship registered in Saint Christopher and Nevis under the current Act. Moreover, Section 5(2) provides that “[...] a ship shall be entitled to be registered if a majority interest in the ship is owned by one or more persons qualified to be owners of Saint Christopher and Nevis ships by virtue of section 4(1).” Two points of importance here are the following: (1) the language used by the Act is permissive as it uses the words’ “shall be eligible” rather than “shall be registered”; and (2) there is no qualification or restriction as to the type of ship that may be registered. Accordingly, fishing vessels, even if small, are entitled to be registered.

According to Section 11, the register shall be maintained by the Registrar. The register shall be so constituted as to distinguish, registrations of small ships, pleasure vessels and submersible craft and may otherwise distinguish between classes or descriptions of ships.

It is noteworthy that Section 49, when dealing with unregistered ships, provides that where a ship is twenty-four meters or more in length and is not registered in Saint Christopher and Nevis or elsewhere, then the ship shall be dealt with in the same manner in all respects as if the ship were a Saint Christopher and Nevis ship. This includes the payment of dues, fees or other charges; the liability to fines and forfeiture; and the punishment of any offences punishable under the Act.

Section 13 provides that every ship shall, before registration, be surveyed by a surveyor. The surveyor shall grant a certificate specifying the ship’s tonnage and build, and such other particulars descriptive of the identity of the ship. On completion of the registration of a ship, the Registrar shall grant a certificate of registry (Section 21).

According to Section 174, a surveyor may at all reasonable times inspect any ship in Saint Christopher and Nevis waters and any Saint Christopher and Nevis ship anywhere, for the purpose of ensuring that it is in compliance with safety rules. If the survey is satisfactorily completed, the Director, or any other person authorised by him, shall issue, the appropriate certificate (Section 183).

Very importantly, Section 52(1) provides that “[e]very Saint Christopher and Nevis ship shall carry insurance cover against risk of loss or damage to third parties, and in particular (a) in respect of the shipowner’s liabilities to a crew member under any provision of Part V; and (b) without prejudice to the relevant provisions of Part XIV and Schedules 3 and 4, claims in respect of loss or damage caused by any cargo carried on board the ship”. Furthermore, every ship anchoring in or trading in or from Saint Christopher and Nevis waters or entering one of its ports shall carry insurance cover against risks of loss or damage to third parties, and against wreck removal expenses in an amount satisfactory to the Receiver of Wreck. (Section 52(2)). This provision is of extreme importance to this Report because, *if the definition of “Saint Christopher and Nevis ship” includes a “Saint Christopher and Nevis fishing vessel”, then fishing vessels (at least those subject to registration under the Act), are already subject to the requirement of maintaining compulsory third-party liability insurance in Saint Christopher and Nevis.*

Another important topic for the purpose of compulsory insurance, at least in so far as determining the amount of possible financial exposure of fisherfolk in relation to damages caused by their activities, is that of limitation of liability. In this respect, Chapter II in Part XV of the Act deals with Limitation and Division of Liability for Maritime Claims. Although Saint Christopher and Nevis is not a Party to the Convention on Limitation of Liability for Maritime Claims, 1976, the Act aims to incorporate, subject to some changes, the provisions of the Convention.

Section 387 entitles a shipowner to limit his liability. Section 388 then provides the list of claims that are subject to limitation of liability, including *inter alia*, claims in respect of loss of life or personal injury or loss or damage to property, claims in respect of loss resulting from delay in the carriage by sea of cargo, claims in respect of loss resulting from infringement of rights other than contractual rights; claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned.

It is noteworthy that claims in the maritime field may be very high (even to the point of bringing a shipowner to bankruptcy), hence the right to limit liability is instrumental in the promotion of the maritime industry. However, even the limits provided are still high for the smallest vessels leading to a high potential financial exposure. It may be noted that Section 393 provides that:

The limits of liability for claims other than those provided for in section 401, arising on any distinct occasion, shall be calculated as follows:

- (a) in respect of claims for loss of life or personal injury,
  - (i) **166 667 special drawing rights (SDR) for a ship with a tonnage not exceeding 300 tonnes;**
  - (ii) 333 000 SDR for a ship with a tonnage from 301 tonnes to 500 tonnes; or
  - (iii) for a ship with a tonnage in excess of 500 tonnes, the following amount in addition to that mentioned in subparagraph (ii):
    - (aa) for each ton from 501 to 3°000 tonnes, 500 SDR;
    - (bb) for each ton from 3 001 to 30 000 tonnes, 333 SDR;
    - (cc) for each ton from 30 001 to 70 000 tonnes, 250 SDR; and
    - (dd) for each ton in excess of 70 000 tonnes, 167 SDR,
- (b) in respect of any other claims,
  - (i) **83 333 SDR for a ship with a tonnage not exceeding 300 tonnes;**
  - (ii) 167 000 SDR for a ship with a tonnage from 301 tonnes to 500 tonnes;

(iii) for a ship with a tonnage in excess of 500 tonnes, the following amount in addition to that mentioned in subparagraph (ii):

- (aa) for each ton from 501 to 30 000 tonnes, 167 SDR;
- (bb) for each ton from 30 001 to 70 000 tonnes, 125 SDR; and
- (cc) for each ton in excess of 70 000 tonnes, 83 SDR.

It is also important to note that Saint Christopher and Nevis does not allow the right to limit liability in respect of, *inter alia*, the following claims:

Limitation of liability under this Chapter shall not apply to the following claims:

[...]

(c) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is under such contract only permitted to limit his liability to an amount greater than that provided for in section 393;

This latter provision will protect the full recovery for claims from the crew of fishing vessels. In fact, an interesting question that could be posed is whether a fishing vessel is a ship for the purposes of this Chapter. In this respect, Section 386 provides that:

“ship” includes any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or part of a ship;

Accordingly, in light of this definition, the provisions on limitation of liability would apply to fishing vessels also – even the small ones. Therefore, in incorporating the limits of liability of the Convention, Section 393 reduced the limits of liability for small vessels (under 300 tonnes) by approximately 50 percent.

## 9.4. LEGISLATION ON FISHERIES RELATED MATTERS

### 9.4.1. Fisheries, Aquaculture and Marine Resources Act, 2016

Saint Christopher and Nevis Fisheries Legislation is contained in *an Act to provide for the conservation, management, development and sustainable use of fisheries, aquaculture and marine resources, to monitor and control Saint Christopher and Nevis fishing vessels beyond the fisheries waters, to repeal the Fisheries Act 1984 and for related matters*. The Act defines a “fishing vessel” as “any vessel which is used for, equipped to be used for, or of a type normally used for, fishing or related activities”, while a “local fishing vessel” is “fishing vessel owned by any person or persons who are nationals or permanent residents of Saint Christopher and Nevis and used for fishing primarily in the fisheries waters or as may be otherwise specified by Regulation”. The Act also defines a “foreign fishing vessel” as “a fishing vessel other than a Saint Christopher and Nevis fishing vessel”, “locally based foreign fishing vessel” as “any foreign-owned fishing vessel registered and licensed in Saint Christopher and Nevis which lands all its catch in Saint Christopher and Nevis”, and “Saint Christopher and Nevis fishing vessel” as “any fishing vessel that is used or intended to be used for fishing or related activities in areas beyond national jurisdiction and holds a valid and applicable registration issued by the entity authorised by the Government of Saint Christopher and Nevis to register such vessels”.

Regarding foreign fishing vessels licences, the Act contains no mention of a requirement of Insurance. In fact, Section 40(1) imposes the first limitation on the grant of a fisheries access agreement by providing that “[u]nless otherwise provided in this Act, no foreign fishing vessel shall be used for fishing or related activities in the fisheries waters except under and in accordance with an applicable fisheries access agreement”. The licence or other authorisation for fishing shall be issued to a foreign

fishing vessel once fisheries access has been granted (Section 62). Section 63(1) provides that “[n]o **person shall engage in any of the following activities without a valid and applicable licence or authorisation issued** in accordance with this Act (a) fishing or using a fishing vessel for fishing or related activities in the fisheries waters, including diving for commercial fishing purposes, commercial sport fishing and recreational fishing”.

Regarding local fishing vessels licences, section 63(1)(b) adds “using a Saint Christopher and Nevis fishing vessel for fishing or related activities in areas beyond the fisheries waters, including fishing on the high seas or in waters under the jurisdiction of another State” to the activities that require a valid licence.

Section 36 of Part 4, when dealing with registration, imposes an obligation to declare whether a vessel will be used for any fishing or related activities at the time of registration. In this sense, Section 36 provides as follows:

Notwithstanding any other national law or authority, any entity authorised by the Government of Saint Christopher and Nevis to register vessels to be used for any fishing or related activities in areas beyond national jurisdiction shall require the applicant to:

- (a) **declare whether the vessel will be used for any fishing or related activities;**
- (b) provide such information as may be prescribed or required by the Director for the purpose of implementing national law and applicable international;  
[...]
- (c) **provide a valid and applicable authorisation to fish in areas beyond national jurisdiction issued by the Director.**

This Part is very important as section 35 clearly states that “There shall be established and maintained a national register of licences, authorisations, persons and vessels issued under this Act in accordance with such requirements as may be prescribed or required by the Minister [responsible for fisheries, aquaculture and marine resources]”.

In accordance with Section 66, in granting or renewing a licence several things must be confirmed including that all applicable licencing terms and conditions have been met, and that ***all relevant national requirements for seaworthiness and safety have been complied with***. If, contrary to what was stated above, it is deemed that fishing vessels are still not required to maintain compulsory insurance under the Merchant Shipping Act, this could be a reasonable entry point, by adding, besides seaworthiness and safety concerns, the requirement of third-party liability insurance as a precondition for the licence.

A final provision of the Fisheries Act which is of relevance to this Report deals with the powers of authorized officers. In this respect, section 86 provides that: “An authorised officer may, for purposes and activities falling within the scope of this Act (a) **inspect, take, detain and secure samples, documents, logbooks or other information, or copies thereof**, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house, but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act; (b) make or take copies of any record, and for this purpose may take possession of and remove any records from the place where they are kept, for such period of time as is reasonable in the circumstances”. Failure to produce the required documentation may lead to enforcement actions.

#### 9.4.2. Fisheries Regulations, 1995

The provisions of the Fisheries Regulations, 1995, enacted under the former Fisheries Act, 1984 are still in force as long as they are compatible with the Fisheries, Aquaculture and Marine Resources Act, 2016. Regarding licenses, Section 4 provides that “[e]very application for a foreign fishing licence shall be as prescribed under these Regulations and such application form may be obtained from

the Chief Fisheries Officer”. The obligation to get a licence remains, however in the current legislation is the Director the person in charge of issuing licences.

## **9.5. LEGISLATION ON INSURANCE RELATED MATTERS**

### **9.5.1. Insurance Act, 2009 and Motor Vehicles Insurance (Third-Party Risks) Act**

The Insurance Act, 2009 aims to revise the law regulating the carrying out of insurance business in Saint Christopher and Nevis in order to strengthen the protection given to policy holders; to increase the capital and solvency requirements of insurance companies; to regulate the operation of pension fund plans; and to give effect to matters related thereto. As such, it is of a very general nature and of limited assistance for the purposes of this Report.

The Motor Vehicles Insurance (Third-Party Risks) Act, which aims to revise and consolidate the law relating to road traffic, may offer some insight into how insurance at a small scale may be introduced in a compulsory manner.

Section 4(1) introduces compulsory insurance in relation to motor vehicles by providing that “it shall not be lawful for any person to use, or to cause or permit any other person to use a motor vehicle on a road, unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act”. Subsection (2) then recognizes any contravention to the latter provision as an offence and imposes a penalty (which may include a fine, imprisonment, or both). Additionally, this subsection provides that any person committing an offence may be disqualified from holding or obtaining a driving licence under the Act for a period of 12 months from the date of the conviction. Section 5 then deals in detail with the requirements of compulsory insurance for motor vehicles.

### **9.5.2. Marine Pollution Management Act, 2002**

Another Act of particular interest to this Report is the Marine Pollution Management Act. This Act aims to protect ecologically sensitive marine resources, providing for civil liability for oil pollution damage by ships and giving effect to certain international conventions relating to pollution of the sea. Although in its initial sections this Act makes general provisions on oil pollution (e.g. prohibition on dumping of hazardous wastes, prohibition on vessel discharges into territorial sea, requirements for ships carrying oil, etc.), the most important part for the purpose of this Report is Part V which deals with civil liability for oil pollution damage. This Part aims to implement the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992, to which Saint Christopher and Nevis is a State Party.

The Act provides in Section 19(1) that where a maritime pollution damage casualty or marine pollution incident occur, the owner or master of the vessel shall be liable for any pollution damage caused by the vessel as a result of the incident. Section 19(2) excludes liability for the usual exceptions that are corollary to strict liability as per the CLC 1992.

The Act then moves to the crucial point of compulsory insurance. It is important to note that the provisions of compulsory insurance of the CLC were used as models for most modern liability conventions and can thus offer some elements to consider in the introduction of compulsory insurance in fisheries. These provisions include, *inter alia*, the requirement and amount of compulsory insurance, the compulsory insurance certificate, the right of direct action, and a requirement of State Parties to monitor and enforce these provisions. The Act aims to implement the Convention’s provisions on the above points.

Section 19(5) confines the requirement of compulsory insurance to ships carrying more than 2 000 tonnes of oil in bulk as cargo. According to Section 19(6), the insurance certificate shall be

carried on board the vessel, and in respect of locally registered vessels, a copy shall be lodged with the Maritime Authority.

Section 19(8) then provides that where a vessel fails to carry a valid certificate in contravention of subsection (7), the master or owner of the ship commits an offence and is liable on conviction to a fine of USD 300 000 or imprisonment for a term not exceeding two years, or both.

Another important aspect of compulsory insurance is the right of direct action. In this respect, Section 19(9) provides that where there is an action for liability under the Act, “[a]ny claim in respect of compensation for pollution damage may be brought directly against the insurer or other person providing financial security”.

### 9.5.3. Merchant Shipping Act, 2002

Part XIV of the Merchant Shipping Act, 2002 also covers compulsory insurance against liability for pollution and complements the Marine Pollution Management Act, 2002 with certain provisions. The Merchant Shipping Act provides in Section 330 (1) that where oil is discharged or escapes from a ship, the shipowner will be liable for any damage caused outside the ship by contamination resulting from that discharge or escape, for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused, and for any damage so caused by any measures so taken. Section 330(3) and (4) specifies that this only applies to any ship constructed or adapted for carrying oil in bulk as cargo or to other ship capable of carrying other cargoes besides oil, while it is carrying oil in bulk as cargo. Though Section 331 extends this regime to ships other than a ship to which Section 330 applies, this part of the Act is mainly addressing pollution by tankers. Section 332 excludes liability for the usual exceptions found in modern liability conventions.

The Act then moves to the crucial point of compulsory insurance. As stated by Section 340(2), any ship carrying in bulk a cargo of more than 2 000 tonnes of oil shall not enter or leave a port in Saint Christopher and Nevis nor, if it is a local vessel, a port in any other country, unless there is in force a compulsory insurance certificate (Section 340(2)). Any contravention would constitute an offence and the master or owner will be liable on summary conviction to a fine not exceeding USD 20 000 (Section 340(5)).

The right of direct action is also recognised (Section 342(1)). Section 342(2) then provides the defences which may be available to the insurer and Section 342(3) allows the insurer to “limit his liability in respect of claims made against him by virtue of this section ***in like manner and to the same extent as the owner may limit his liability*** but the insurer may do so whether or not the discharge or escape, or, as the case may be, the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 334(3).” This wording is different from that of the Convention and may lead to disputes in respect of the circumstances in which the insurer may actually limit liability.

It is noteworthy that, although Saint Christopher and Nevis is a State Party to both the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 and the Nairobi International Convention on the Removal of Wrecks, 2007, the Merchant Shipping act does not incorporate effectively their provisions; particularly those relating to compulsory insurance which could be applicable to fishing vessels.

## 9.6. INSTITUTIONAL FRAMEWORK

### 9.6.1. Legislation on Maritime Zones

The Government entities tasked with the implementation of the legal framework of Saint Christopher and Nevis vary depending on the legislation in question as well as on the relevant task. For example, under the **Maritime Areas Act, 1984**, the Minister for Foreign Affairs is, *inter alia*, empowered to determine – through an order – the outermost points of the Saint Christopher and Nevis maritime zones, as well as to declare that the continental shelf or the EEZ shall not extend to any specified area of the sea, seabed or subsoil that would otherwise be included therein by virtue of Section 7 (continental shelf) or Section 8 (EEZ). Furthermore, where the Minister is satisfied that any strait between Saint Christopher and Nevis and an adjacent State is being used for international navigation, he shall designate that strait as delimited in the order. The Minister, after consultation with the Attorney General, may make rules for carrying out or giving effect to the jurisdiction rules.

### 9.6.2. Legislation on Shipping Related Matters

Legislation of shipping matters is found in the **Merchant Shipping Act, 2002**. This is an all embracing Act which covers a diversity of areas including the ship, the crew, passenger ships, safety, wrecks and salvage, limitation and division of liability, conventions and legal proceedings, maritime liens and other matters. Of particular importance for the purposes of this Report are the parts dealing with ship registration and limitation of liability.

The Minister responsible for maritime affairs shall have the general superintendence of most of the matters relating to merchant shipping and seamen and is authorised to carry into execution the provisions of the Act. Regarding registration, the Minister may give instructions to his officers as to the manner of making entries in the register, as to the execution and attestation of powers of attorney, as to any evidence required for identifying any person, as to the referring to himself of any question involving doubt or difficulty. He may, by notification published in the Gazette, appoint any other port in Saint Christopher and Nevis as a port of registry and may make regulations for and in connection with the registration of ships as Saint Christopher and Nevis ships. The Minister may prescribe the fees to be charged in all matters relating to the registration of a ship.

The Minister may also make regulations prescribing safety requirements and providing for the issue of local certificates in respect of fishing vessels. In making regulations respecting fishing vessels, the Minister shall have due regard to the International Convention for the Safety of Fishing Vessels, 1977, as amended by the Protocol of 1993 and the provisions of the fisheries legislation.

The Director of Maritime Affairs shall be the Head of Saint Christopher and Nevis Shipping Registry and may act in the capacity of the Registrar, and in such other capacity as the Minister may direct. He shall be the principal adviser to the Minister in all matters relating to maritime affairs and have, subject to the directions of the Minister, the general superintendence of shipping belonging to, or present in, Saint Christopher and Nevis. The Director has the responsibility for the enforcement and administration of the provisions of the Act and any rules made thereunder.

The Registrar is tasked by the Act with the maintenance of the register (before being registered under the Act, a vessel must be surveyed by a surveyor and tonnage ascertained in accordance with the tonnage regulations). On completion of the registration of a ship, the Registrar shall grant a certificate of registry comprising such particulars respecting the ship as are specified in the registration regulations.

Part XV of the Merchant Shipping Act deals with limitation and division of liability and is devoted to setting out the legal framework for that purpose. Its main intention is to implement the provisions of the Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974, as well as establishing the rules of limitation of liability for maritime claims. Accordingly, this Part does not make provision for the assignment of institutional responsibilities.

### 9.6.3. Legislation on Fisheries Related Matters

Insofar as legislation on fisheries matters, this Report considered the Fisheries, Aquaculture and Marine Resources Act, 2016 and the Fisheries Regulations, 1995. Under the **Fisheries, Aquaculture and Marine Resources Act**, the Minister responsible for fisheries, aquaculture and marine resources is tasked with approving and as appropriate recommending amendments to or revocation of a Fisheries, Aquaculture and Marine Resources Management and Development Policy for consideration and endorsement by Cabinet; a Fisheries, Aquaculture and Marine Resources Management and Development Strategy for consideration and endorsement by Cabinet; a Corporate Plan for consideration and endorsement by Cabinet; and annual operational plans. He shall implement, by order or by regulations, conservation and management measures; requirements under any applicable international agreement; and all applicable international conservation and management measures. Furthermore, the Minister may, on the advice of the Director, designate local fisheries management areas and appoint a Fisheries Advisory Committee to advise him on several fishing related matters.

The Minister may enter into a written fisheries access agreement to permit any foreign fishing vessel access to the fisheries waters for purposes of fishing or related activities. The Minister, prior to entering into a fisheries access agreement shall ensure that the fisheries access agreement complies with the standards and requirements of the Act; the Advisory Council has reviewed and made recommendations to the Director on the proposal for the fisheries access agreement; and the Director has made recommendations to the Minister on the proposal for the fisheries access agreement.

The Director shall be appointed by the Minister and he is tasked with the coordination and facilitation of the implementation of national policy and strategies concerning fisheries conservation, management, development and sustainable use. He shall monitor and advise on international developments in fisheries matters and ensure the fulfilment of obligations of Saint Christopher and Nevis under relevant international agreements as well as making decisions relating to licensing. In this respect, he shall appoint a Licensing Committee in consultation with the Minister. The Licensing Committee shall review applications for licenses and authorisations and make recommendations to the Director relating to their grant, renewal, suspension and revocation. Where the Director declines to grant or renew a licence or authorisation, he or she shall state in writing reasons for the decision, and promptly transmit them to the applicant.

Regarding enforcement, the right to stop and board any local fishing vessel for the purpose of verifying that it holds a valid certificate of inspection and that the vessel and its equipment are being maintained in accordance with the prescribed standards is vested in the authorised officers.

For adjudication purposes, in normal circumstances, a person aggrieved by a decision of an authorised officer may appeal against it to a Court. Any offence under the Act shall be prosecuted before a Court of Saint Christopher and Nevis.

Pursuant to the power to make regulations granted by the Fisheries Act, 1984 the Minister responsible for Fisheries enacted the **Fisheries Regulations, 1995**. Under these Regulations the current Director figure is called Chief Fisheries Officer, tasked with the same duties regarding licenses.



#### 9.6.4. Legislation on Insurance Related Matters

Insofar as legislation on insurance related matters, this Report considered the Insurance Act, 2009. The Motor Vehicles Insurance (Third-Party Risks) Act, the Marine Pollution Management Act, 2002 and the Merchant Shipping Act, 2002 were also considered, particularly insofar as they relate to a requirement of compulsory insurance.

The **Insurance Act, 2009** is of a very general nature and of limited assistance for the purposes of this Report. It is however, important to note that the Registrar of Insurance shall be responsible for the general administration of the Insurance Act. The Minister responsible for Finance is given a number of responsibilities, of which it is important to highlight the power to make regulations for giving effect to the Act.

Insofar as the **Motor Vehicles Insurance (Third-Party Risks) Act** is concerned, reference was made exclusively to Section 4 which deals with motor vehicle insurance. The reason for this, as explained earlier, is that it may offer some insight into how insurance at a small scale may be introduced in a compulsory manner.

Like other Acts discussed above, the **Marine Pollution Management Act, 2002** is a vast Act and extends to a number of areas that fall beyond the scope of this Report. Therefore, focus will be placed on Section 19 which deals with civil liability for oil pollution damage as it includes basis of liability and, more importantly, a requirement of compulsory insurance. Section 19 of the Act does not delegate many institutional obligations as it merely provides the framework for the courts to settle actions relating to liability for oil pollution damage. Notwithstanding this, it is important to note Section 19(5) which deals specifically with the requirement of compulsory insurance.

The **Merchant Shipping Act, 2002** supplements the provisions of the Marine Pollution Management Act, 2002 with regard to civil liability for oil pollution damage. The Merchant Shipping Act establishes the basis of liability, limits of liability and the requirement of compulsory insurance.

Under Section 340(3) of the Merchant Shipping Act, the Director may issue a certificate showing that there is a contract of insurance or other security in force in respect of a Saint Christopher and Nevis ship. If the ship is registered in a foreign country which is a Party to the CLC, 1992, the certificate shall be issued by or under the authority of the government of the other State Party. If the ship is registered in a country which is not a State Party to the Convention, the certificate shall be issued by the Director or by or under the authority of the government of any State Party other than Saint Christopher and Nevis. The Director shall make available for public inspection a copy of any certificate issued by him in respect of a Saint Christopher and Nevis ship. The Minister responsible for maritime affairs may make regulations providing for the cancellation and surrender of a certificate in such circumstances as may be prescribed by the regulations.

The compulsory insurance certificate must be carried on board the ship and shall, on demand, be produced by the master to any customs officer, the Director or any surveyor authorised by the Director for the purpose and, if the ship is a Saint Christopher and Nevis ship, to any special agent.

Regarding enforcement, the Merchant Shipping Act does not assign the specific right of “stop and board” to anyone and merely points out that no ship (local or foreign) shall enter or leave a port in Saint Christopher and Nevis or arrive at or leave a terminal in the territorial sea of Saint Christopher and Nevis unless there is in force a compulsory insurance certificate, and that no Saint Christopher and Nevis shall enter or leave a port of another country, or arrive at or leave a terminal in the territorial sea of another country without said certificate. However, the Act provides that the compulsory insurance certificate must be carried on board the ship and shall, on demand, “be produced” by the master to a customs officer, the Director or any surveyor authorised by the Director for the purpose and, if the ship is a Saint Christopher and Nevis ship, to any special agent. It is thus not clear whether the aforesaid

officers may “stop and board” a vessel, or whether they may only go on board the vessel while it is within any port to require production of certificate.

## 9.7. OVERALL ASSESSMENT

There are several pieces of legislation that may be relevant for the introduction of a compulsory insurance requirement. In fact, some of the provisions already enacted provide support for such requirement. For example, as recorded earlier, Section 52(1) of the Merchant Shipping Act, 2002 provides that “[e]very Saint Christopher and Nevis ship shall carry insurance cover against risk of loss or damage to third parties, and in particular (a) in respect of the shipowner’s liabilities to a crew member under any provision of Part V; and (b) without prejudice to the relevant provisions of Part XIV and Schedules 3 and 4, claims in respect of loss or damage caused by any cargo carried on board the ship”. Provided that this provision applies to any vessel (then including fishing vessels), such evidence could be in the form of an insurance policy.

However, bearing in mind that there is no express reference to compulsory insurance for fishing vessels, if such requirement is deemed as not existent, what could be the best entry point for such requirement? In this respect, it may be important to look at the Fisheries, Aquaculture and Marine Resources Act, 2016, Section 63(1) of which provides that “[n]o person shall engage in any of the following activities without a valid and applicable licence or authorisation issued in accordance with this Act (a) fishing or using a fishing vessel for fishing or related activities in the fisheries waters, including diving for commercial fishing purposes, commercial sport fishing and recreational fishing”. Similarly, Section 63(1)(b) adds the requirement of a valid licence for local fishing vessel.

Noting the requirement of registration for a vessel to be used for fishing or related activities in the waters of Saint Christopher and Nevis, and the further requirement of a licence for that purpose (which may be relevant in cases of vessels that are not subject to registration), it seems reasonable that the entry point for a requirement of compulsory insurance may be inserted as a requirement for the issue of the licence (similar to the required certificate specifying the ship’s tonnage and build). The fact that some fishing vessels are very small should not be a deterrent. The introduction of compulsory insurance for fishing vessels could follow a similar approach of the Motor Vehicles Insurance (Third-Party Risks) Act in relation to motor vehicles.

Insofar as the limit of compulsory insurance is concerned, this would certainly be subject to debate due to the potential financial implications. However, there are a few things that could be borne in mind in this respect.

1. Saint Christopher and Nevis is not a Party to the Convention on Limitation of Liability for Maritime Claims, 1976. However, the Merchant Shipping Act, 2002 allows the shipowner to cap his liability to the following amounts:
  - (a) in respect of claims for loss of life or personal injury,
    - (i) [...]
    - (ii) 333 000 SDR for a ship with a tonnage from 301 tonnes to 500 tonnes; or
    - (iii) for a ship with a tonnage in excess of 500 tonnes, the following amount in addition to that mentioned in subparagraph (ii):
      - (aa) for each tonne from 501 to 3 000 tonnes, 500 SDR;
      - (bb) for each tonne from 3 001 to 30 000 tonnes, 333 SDR;
      - (cc) for each tonne from 30 001 to 70 000 tonnes, 250 SDR;
      - and (dd) for each tonne in excess of 70 000 tonnes, 167 SDR,
  - (b) in respect of any other claims,
    - (i) [...]
    - (ii) 167 000 SDR for a ship with a tonnage from 301 tonnes to 500 tonnes;
    - (iii) for a ship with a tonnage in excess of 500 tonnes, the following amount in addition to that mentioned in subparagraph (ii):
      - (aa) for each tonne from 501 to 30 000 tonnes, 167 SDR;

(bb) for each tonne from 30 001 to 70 000 tonnes, 125 SDR;  
and (cc) for each tonne in excess of 70 000 tonnes, 83 SDR.

These limits of liability reflect the limits of the Convention on Limitation of Liability for Maritime Claims, 1976. However, to protect smaller vessels, the Merchant Shipping Act has reduced these limits (in the parts omitted in the preceding paragraph) in respect of small vessels to the following:

- (i) 166 667 SDR for a ship with a tonnage not exceeding 300 tonnes (in respect of claims for loss of life or personal injury); and
- (ii) 83 333 SDR for a ship with a tonnage not exceeding 300 tonnes (in respect of any other claims).

## 10. SAINT VINCENT AND THE GRENADINES

### 10.1. INTRODUCTION

The analysis of the Legal Framework of Saint Vincent and the Grenadines covers legislation governing the maritime zones wherein the State enjoys sovereignty, sovereign rights, or jurisdiction in relation to fishing related matters (i.e. the *Maritime Areas Act, 1983*), legislation on shipping related matters – including *inter alia* ship registration and limitation of liability (i.e. the *Shipping Act, 2004, as amended*), legislation on fisheries matters (i.e. the *Fisheries Act, 1986, as amended*; the *High Seas Fishing Act, 2001, as amended*) as well as legislation on insurance related matters (i.e. the *Marine Insurance Act, 1989*; the *Insurance Act, 2003*; the *Convention on Oil Pollution Act, 2002*. In this category, the *Motor Vehicles Insurance (Third-Party Risks) Act, 2003* was considered, particularly insofar as it relates to a requirement of compulsory insurance).

### 10.2. LEGISLATION ON MARITIME ZONES

#### 10.2.1. Maritime Areas Act, 1983 (Chapter 464), as amended

The Maritime Areas Act, 1983, as amended is an Act to declare the maritime areas, and for matters incidental thereto and connected therewith. Saint Vincent and the Grenadines is an archipelagic State and the Act defines in section 4 its archipelagic waters as comprising “the waters from the landward side of the archipelagic baselines to the archipelagic closing lines.” Section 2 defines the waters of Saint Vincent and the Grenadines as “the internal waters and the archipelagic waters and territorial sea”, and Section 7 establishes an EEZ which “comprises the waters, seabed and subsoil contiguous to its territorial sea from its archipelagic baselines seaward to a limit of two hundred nautical miles”. This is important because beyond the archipelagic waters and territorial sea (which are subject to the sovereignty of the State), there is a possibility of claiming an EEZ where specific sovereign rights and limited jurisdiction is recognized by the international law of the sea.

Though fishing itself is not regulated by the Act, Section 20 empowers the Minister for Foreign Affairs to make regulations for the exercise of control in the exclusive economic zone with regard, *inter alia*, to “the exploration and exploitation, conservation and management of living and non-living resources of the seabed and subsoil and the superjacent waters” and “other activities for the economic exploitation of the zone”.

### 10.3. LEGISLATION ON SHIPPING RELATED MATTERS

#### 10.3.1. Shipping Act, 2004 (Chapter 363), as amended

The Shipping Act, 2004 is an all-encompassing Act dealing with ships, crews, safety at sea, prevention of collisions, maritime security, limitation of liability of shipowners and others, and with matters consequential, related or incidental thereto. It is thus an important Act for the purposes of this Report. Section 2 of the Act provides a number of definitions that are important for the topic subject of this Report. Amongst such definitions it is important to mention the following:

[...]

"fishing vessel" means a vessel for the time being used or, intended to be used, for or in connection with fishing other than a vessel used or intended to be used for fishing otherwise than for profit or a vessel for the time being used or intended to be used wholly for the purpose of conveying persons wishing to fish for pleasure;

[...]

“Saint Vincent and the Grenadines ship” means a ship registered in Saint Vincent and the Grenadines under this Act, and “Saint Vincent and the Grenadines vessel” and “Saint Vincent and the Grenadines fishing vessel” shall be construed accordingly;

[...]

“ship” includes every description of vessel used in navigation;

“small ship” means a ship of less than 24 metres in length;

Upon reading the above definitions it is clear that the Shipping Act applies to fishing vessels (at least in some respects). Where the Act does not apply to fishing vessels, clear provisions are made in this respect (e.g. Part VIII. In accordance with the Act, the safety of fishing vessels is regulated in accordance with the provisions of the Torremolinos Convention on Safety of Fishing Vessels as amended by the 1993 Protocol thereto. In relation to small ships, the Minister responsible for shipping and seafarers may make regulations for their safety.).

Of particular importance is the requirement of registration. In accordance with Section 3(1), no ship shall trade in or from the waters of Saint Vincent and the Grenadines unless the ship is a Saint Vincent and the Grenadines ship; or is provided with a certificate of foreign registry. According to Section 3(2), and subject to the provisions of any regulation or any international agreement in force, only Saint Vincent and the Grenadines ships may be engaged in any local trade in the waters of Saint Vincent and the Grenadines.

Of utmost importance for the purpose of this Report is Section 4(1) which provides that “[e]very **Saint Vincent and the Grenadines ship shall carry insurance cover against risks of loss or damage to third parties, and in particular—**

- (a) **in respect of the shipowners liabilities to a crew member under any provision of Part VI; and**
- (b) **claims in respect of loss or damage caused by any cargo carried on board the ship.”**

Section 4(2) continues to state that “[e]very **foreign ship anchoring in or trading in or from the waters of Saint Vincent and the Grenadines or entering a port in Saint Vincent and the Grenadines shall carry insurance cover against risks of loss or damage to third parties**”. This provision seems to indicate that there is already a requirement of compulsory insurance for fishing vessels in some respects (e.g. liability to a crew member and losses caused by a ship’s cargo), and may pave the way for the introduction of a wider requirement of compulsory insurance for fishing vessels as envisaged by this report.

Section 7(1) provides that a ship, unless it is registered in some other State, is required to be registered as a Saint Vincent and the Grenadines ship if the ship is owned wholly by persons qualified to own such ship. Section 7(5) provides that a ship so not registered shall not be recognised as a Saint Vincent and the Grenadines ship and is not entitled to the rights and privileges accorded to Saint Vincent and the Grenadines ships under the Act.

According to Section 12, the Registrar is tasked by the Act with the maintenance of the register (before being registered under the Act, a vessel must be surveyed by a surveyor and tonnage ascertained in accordance with the tonnage regulations [Section 14]). Section 13(4) provides that, “The register may consist of separate register books and shall be so constituted as to distinguish, **registrations of small ships**, pleasure vessels and submersible craft **and may otherwise distinguish between classes or descriptions of ships.**” On completion of the registration of a ship, the Registrar of Ships shall grant a certificate of registry (Section 22).

Section 50(1) deals with the registration of small vessels. Such vessels (with the exception of pleasure craft of a particular length) are required to be registered under the Act. However, the Minister reserves the right to exempt in writing, either generally or specifically, small ships from compliance with subsection 1, subject to such conditions as he may stipulate. It therefore seems that, unless the Minister exempts fishing vessels from registration, they will be covered by the provisions of the Act relating to registration and consequently to the provisions dealing with compulsory insurance.

Another important topic for the purpose of compulsory insurance, at least in so far as determining the amount of possible financial exposure of fisherfolk in relation to damages caused by their activities, is that of limitation of liability. In this respect, Part XVII of the Act deals with Limitation and Division of Liability for Maritime Claims.

It is noteworthy that, although Saint Vincent and the Grenadines is not a State Party to the Convention on Limitation of Liability for Maritime Claims, 1976, this Part reflects in its majority the provisions of the Convention (this Convention, together with the 1996 Protocol thereto—to which Saint Vincent and the Grenadines is also not a State Party— set out the legal framework for the exercise of the right to limit liability for maritime claims. It may be recalled that claims in the maritime field may be very high (even to the point of bringing a shipowner to bankruptcy), hence the right to limit liability has been instrumental in the promotion of the maritime industry. However, even the limits provided are still high for the smallest vessels leading to a high potential financial exposure. It may be noted that Section 338 of the Act provides that:

- (1) The limits of liability for claims other than those provided for in section 335, arising on any distinct occasion, shall be calculated in respect of claims for loss of life or personal injury as follows:
  - (a) **166 667 SDR for a ship with a tonnage not exceeding three hundred tonnes;**
  - (b) 333 000 SDR for a ship with a tonnage from three hundred and one tonnes to five hundred tonnes; and
  - (c) for a ship with a tonnage in excess of five hundred tonnes, the following amounts in addition to that mentioned in paragraph (b)—
    - (i) for each ton from five hundred and one to three thousand tonnes, five hundred SDR,
    - (ii) for each ton from three thousand and one to thirty thousand tonnes, three hundred and thirty-three SDR,
    - (iii) for each ton from thirty thousand and one to seventy thousand tonnes, two hundred and fifty SDR; and
    - (iv) for each ton in excess of seventy thousand tonnes, one hundred and sixty-seven SDR.

[Subsection (1) amended by Act No. 31 of 2007.]

- (2) The limits of liability for claims other than those provided for in section 335, arising on any distinct occasion, shall be calculated in respect of any other claims as follows:
  - (a) **eighty three thousand three hundred and thirty-three SDR for a ship with a tonnage not exceeding three hundred tonnes;**
  - (b) one hundred and sixty-seven thousand SDR for a ship with a tonnage from three hundred and one tonnes to five hundred tonnes;
  - (c) for a ship with a tonnage in excess of five hundred tonnes the following amounts in addition to that mentioned in paragraph (b):
    - (i) for each ton from five hundred and one to thirty thousand tonnes, one hundred and sixty-seven SDR,
    - (ii) for each ton from thirty thousand and one to seventy thousand tonnes, one hundred and twenty-five SDR, and
    - (iii) for each ton in excess of seventy thousand tonnes, eighty-three SDR.

[Subsection (2) amended by Act No. 31 of 2007.]

- (3) **Notwithstanding the provisions of subsections (1) and (2) the Minister may by Order amend the limits of liability for ships with a tonnage not exceeding three hundred tonnes.**
- [Subsection (3) inserted by Act No. 31 of 2007.]
- (4) **An Order made by the Minister pursuant to subsection (3) shall be subject to affirmative resolution of the House of Assembly.**
- [Subsection (4) inserted by Act No. 31 of 2007.]
- (5) Where the Minister makes an Order pursuant to subsection (3) the Minister shall inform the Organisation of the limits of liability.

[Subsection (5) inserted by Act No. 31 of 2007.]

It is important to note that Saint Vincent and the Grenadines has made provisions to protect smaller vessels of less than 300 tonnes and vessels between 300 tonnes and 500 tonnes (Section 338(3)). Furthermore, the Act does not allow the right to limit liability in respect of, *inter alia*, the following claims (Section 335):

Limitation of liability under this Part shall not apply to the following claims

[...]

(c) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is under such contract only permitted to limit his liability to an amount greater than that provided for in section 338;

An interesting question that could be posed is whether a fishing vessel is a ship for the purposes of this Part. In this respect, Section 331 defines “ship” as any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship. Further clarification is provided by Section 2 of the Act which provides that “ship” includes every description of vessel used in navigation.

Accordingly, in light of these provisions, limitation of liability would be applicable to fishing vessels also – even the small ones (in this respect it may be interesting to note that jurisprudence has determined that even a craft like a jet ski can be considered a ship for the purposes of the Convention). In this respect, **it is noteworthy that Sections 338(1)(a) and 338(2)(a) establish limits of liability in relation to vessels of less than 300 tonnes that are very low and that therefore would enable the owners of fishing vessels to obtain insurance at a reasonable premium.**

### 10.3.2. Port Authority Act, 1987 (Chapter 362), as amended

The Port Authority Act is an *Act to provide for the establishment of an Authority to be known as the Saint Vincent and the Grenadines Port Authority: to provide a co-ordinated and efficient system of port facilities and services: and for the purpose of providing duties and powers of the Authority and for the transfer to, investing in the Authority of functions, assets and liabilities of the Port and Marine Department and the Saint Vincent Port Authority established under the Port Authority Act, 1975, and for other matters related thereto and connected therewith.* Though the purpose of this Act seems to be beyond the scope of this Report there are a few provisions that are of very high relevance for this study.

Section 15(2) provides that “[a]ll users of the port facilities are required to carry bodily injury liability insurance and property damage liability insurance, and to furnish a certificate of insurance to the Port Manager”. It is suggested that fishing vessels may fall under the term “users of port facilities”. This may be supported by the fact that when the Act wanted to exempt fishing vessels, it expressly did so (like from the requirement of compulsory pilotage in section 52), and by the fact that the term “perishable goods” which may be subject to removal from the port (Section 49), includes “fish” (Section 2).

## 10.4. LEGISLATION ON FISHERIES RELATED MATTERS

### 10.4.1. Fisheries Act, 1986 (Chapter 59), as amended

Saint Vincent and the Grenadines Fisheries Legislation is contained in *An Act for the promotion and management of fisheries, and for matters incidental thereto and connected therewith.* The Act defines a “fishing vessel” as “any vessel used for commercial fishing or related activities or for sport fishing”,

while a "foreign fishing vessel" is "any fishing vessel other than a local fishing vessel". A "local fishing vessel" is defined as "any fishing vessel:

- (a) wholly owned by the Government or by any public corporation established by or under any law of Saint Vincent and the Grenadines;
- (b) wholly owned by one or more persons who are citizens of Saint Vincent and the Grenadines; or
- (c) wholly owned by any company, society or other association of persons incorporated or established under the laws of Saint Vincent and the Grenadines of which at least fifty-one per cent of the voting shares are held by citizens of Saint Vincent and the Grenadines;"

Fishing in the fishery waters (i.e. the waters of the exclusive economic zone, territorial sea, archipelagic waters and internal waters as defined in the Maritime Areas Act, and any other waters over which Saint Vincent and the Grenadines claims fisheries jurisdiction) is regulated by Part I (Sections 3-19) of the Act, including, *inter alia*, the fishing licences (foreign and local), the validity of the fishing licence and agreement, cancellation and suspension of fishing licences, etc.

Regarding foreign fishing vessels licences, the Act contains no mention of a requirement of Insurance. In fact, Section 8(1) imposes the only limitation on the issue of a licence by providing that "[n]o foreign fishing vessel shall be used for fishing or related activities in the fishery waters without a valid foreign fishing licence issued under this section." Section 8(4) continues: "Subject to subsection (5), no foreign fishing licence shall be issued to any foreign fishing vessel unless there is in force with the government of the flag state of the vessel, or with an association of which the owner or charterer is a member, an agreement entered into under section 7 to which the Government of Saint Vincent and the Grenadines is a party". This shall not apply to a licence issued in respect of test fishing operations or a locally based foreign fishing vessel.

Regarding local fishing vessels' licences, Section 11(1) provides that no local fishing vessel shall be used for fishing or related activities in the fishery waters of Saint Vincent and the Grenadines without a valid licence. Like section 8 there is no mention of a requirement of insurance.

In accordance with Section 29, "[n]o local fishing vessel shall put to sea unless there is in existence in respect of such fishing vessel a valid certificate of registration issued in accordance with the provisions of this Act." Indeed, as from the entry into force of the Act, every owner of a local fishing vessel, before such vessels is put to sea, be the holder of a valid certificate of registration in respect of such local fishing vessel. An application for a certificate of registration shall be made to the Chief Fisheries Officer who, upon being satisfied that the vessel is seaworthy and fit for the purpose of fishing, issue the owner with such certificate.

A final provision of the Fisheries Act which is of relevance to this Report deals with the powers of authorized officers. In this respect, Section 33(1) provides that "[f]or the purposes of enforcing this Act any authorized officer may, without warrant [...] (b) require to be produced, examine and take copies of any licence or other document required under this Act". Failure to produce the required documentation may lead to enforcement actions.

#### **10.4.2. Fisheries Regulations, 1987, as amended**

The Fisheries Regulations, 1987, enacted under the Fisheries Act, 1986 do not make any reference to insurance as a condition for the licencing of foreign or local fishing vessels. The Regulations place their focus on forms of licences, application form of a licence, and conditions of fishing activities.



### 10.4.3. High Seas Fishing Act, 2001 (Chapter 61), as amended

The High Seas Fishing Act, 2001 was adopted to provide for the control of fishing on the high seas, and for matters incidental hereto and connected therewith. In accordance with the Act, “fishing vessel” is “any vessel used or intended for use for the purposes of the commercial exploitation of fish, including mother ships and any other vessels directly engaged in fishing operations;”. A “foreign fishing vessel” is “a fishing vessel other than a fishing vessel of Saint Vincent and the Grenadines”, while the latter is a “fishing vessel authorised to fly the Saint Vincent and the Grenadines flag.”

Section 3(1)(a) mandates the Chief Fisheries Officer to maintain a record of all fishing vessels in respect of which high seas fishing licences have been issued. Such records shall include the information provided by the applicant as contained in Section 6. In accordance with subsection (1)(d), the Chief Fisheries Officer shall be responsible for the issue, variation, suspension and revocation of licences for fishing in the high seas.

The Act prohibits any Saint Vincent and the Grenadines vessel from fishing in the high seas without a valid licence (Section 4). Further provisions of the Act provide for the conditions for the issue of such licence the validity of which shall be of one year or such period as may be specified in the licence. A high seas fishing licence shall be issued by the Minister responsible for fisheries after consultation with the Chief Fisheries Officer (Section 7).

For the better carrying into effect of the purposes of the Act, the Minister, in accordance with Section 23, may make regulations which may provide, *inter alia*, for “the conditions and procedures of applications for licences and their forms”. Such regulations were adopted in 2003.

The High Seas Fishing Regulations included in the Act contain some important provisions for the purpose of this Report. Regulation 4 provides that “the Minister may, based on the previous or present conditions of which the owner of a fishing vessel is associated, request him to enter into a security by bond or a deposit so as to ensure compliance with the terms and conditions of a fishing licence”.

Regulation 6 stipulates the general conditions for issuance of licence. In accordance with this Regulation,

In addition to the conditions which the Chief Fisheries Officer may attach to a fishing licence pursuant to regulation 3(6), every fishing licence shall be subject to the following conditions:

[...]

- (i) **that the fishing vessel has sufficient insurance coverage to protect the owner of the vessel, any authorised officer and their interests and to indemnify third parties against loss or damage and to protect their own interest;**

This means that there is already a requirement of compulsory insurance for fishing vessels that fish in the high seas. This provision may thus be used as a model for similar provisions in relation to licences be issued to local and foreign fishing vessels fishing in fisheries waters of Saint Vincent and the Grenadines.

## 10.5. LEGISLATION ON INSURANCE RELATED MATTERS

### 10.5.1. Marine Insurance Act, 1989 (Chapter 308)

Heavily influenced by the UK Marine Insurance Act 1906, the Marine Insurance Act provides the basic legal framework for the marine insurance business. Section 4 defines a contract of marine insurance as “a contract whereby the insurer undertakes to indemnify the assured in manner and to the extent thereby agreed against marine losses, that is to say, the losses incident to marine adventure”.

This definition is crucial as it limits the scope of an insurance contract. As stated earlier, the Act then goes on to provide the legal framework for a marine insurance contract and, though it does not deal with the compulsory nature of any type of insurance, once adopted, the contracts for compulsory insurance in relation to fisheries will be subjects to the provisions of this Act.

#### **10.5.2. Motor Vehicle Insurance (Third Party Risks) Act, 2003 (Chapter 309)**

The Motor Vehicle Insurance (Third Party Risks) Act, which aims to make special provisions for the protection of third parties against risks arising out of motor vehicle accidents, may offer some insight into how insurance at a small scale may be introduced in a compulsory manner.

Section 3(1) introduces compulsory insurance in relation to motor vehicles by providing that “[n]o person shall use or cause or permit any other person to use a motor vehicle on a public road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, a policy of insurance in respect of third party risks in compliance with the requirements of this Act”. Subsection (2) then recognizes any contravention to the latter provision as an offence and imposes a penalty (which may include a fine, imprisonment, or both). Additionally, this subsection provides that any person committing an offence may be disqualified from holding or obtaining a driving licence under the Act for a period of 12 months from the date of the conviction.

The Act then deals in detail with the requirements of compulsory insurance for motor vehicles. Importantly, Section 6 of the Act stipulates that evidence of insurance shall be produced prior to the registration of the motor vehicle. Considering that, in accordance with the Fisheries Act, fishing vessels are subject to registration, this requirement may be transposed to fishing vessels (similar to the requirement under the High Seas Fishing Act). Section 9 of the Act provides for the right of direct action against the insurer. Such right is subject to the provision of Section 8.

#### **10.5.3. Convention on Oil Pollution Act, 2002 (Chapter 347)**

Another Act of particular interest to this Report is the Convention on Oil Pollution Damage Act, 2002 which provides for the implementation of the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC) and the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1992 (Fund Convention). Through this Act, provisions of these two international instruments (Article I-XI of the CLC and Articles 1 to 15 of the Fund Convention) form part of the laws of Saint Vincent and the Grenadines.

Section 7 addresses the crucial point of compulsory insurance. It is important to note that the provisions of compulsory insurance of the CLC were used as models for most modern liability conventions and can thus offer some elements to consider in the introduction of compulsory insurance in fisheries. These provisions include, *inter alia*, the requirement and amount of compulsory insurance, the compulsory insurance certificate, the right of direct action, and a requirement of State Parties to monitor and enforce these provisions. The Act aims to implement the Convention’s provisions on the above points.

Thus, in respect of ships registered in Saint Vincent and the Grenadines, certificates of insurance referred to in Article VII(2) of the 1992 Civil Liability Convention shall be issued by the Registrar of Ships. The same provision shall apply in relation to ships flying the flag of a State Non-Party to the Convention that enter or leave a port in the territory of Saint Vincent and the Grenadines.

The Act repeals the provisions of the Oil Pollution (Liability and Compensation) Act, 1977 (Chapter 356) from the date of its commencement save as regards things done or omitted to be done before such repeal.

## 10.6. INSTITUTIONAL FRAMEWORK

### 10.6.1. Legislation on Maritime Zones

The Government entities tasked with the implementation of the legal framework of Saint Vincent and the Grenadines vary depending on the legislation in question as well as on the relevant task. For example, under the **Maritime Areas Act, 1983, as amended** empowers the Minister for Foreign Affairs, by notification in the official gazette, to make regulations regulating the right of innocent passage of foreign ships in relation to, *inter alia*, the conservation of the living resources of the sea or the prevention of infringement of the laws and regulations of Saint Vincent and the Grenadines governing marine living resources (Section 10(3)). The Minister is also empowered to make regulations relating to archipelagic sea lanes passage wherein fishing, including the storage of fishing gears, is prohibited (Section 14(1)(c)).

In relation to fisheries, the Act empowers the Minister to, make regulations regarding the exercise of control in the exclusive economic zone with regards to, *inter alia*, the exploration and exploitation, conservation and management of living and non-living resources of the seabed and subsoil and superjacent waters.

### 10.6.2. Legislation on Shipping Related Matters

Legislation of shipping matters is found in the **Shipping Act, 2004, as amended**. This is an all embracing Act which covers a diversity of areas including the ship, the crew, passenger ships, safety, wrecks and salvage, limitation and division of liability, conventions and legal proceedings, maritime liens and other matters. Of particular importance for the purposes of this Report are the parts dealing with ship registration and limitation of liability. The Minister responsible for shipping and seafarers shall be responsible for the administration and implementation of the Act.

Regarding registration, the Minister may by regulations prescribe a system of licensing for Saint Vincent and the Grenadines ships to engage in local trade in the waters of Saint Vincent and the Grenadines. He may also make regulations to provide for the circumstances under which foreign ships may engage in local trade in the waters of Saint Vincent and the Grenadines. He may, by order, appoint any other port in Saint Vincent and the Grenadines as a port of registry and may make regulations for and in connection with the registration of ships as Saint Vincent and the Grenadines ships. The Minister may prescribe the fees to be charged in all matters relating to the registration of a ship.

The Minister may exempt, either generally or specifically, small ships from compliance with the requirements for registration, subject to such conditions as he may stipulate. He may make regulations regarding small ships.

The Department of Maritime Administration shall exercise general supervision over all matters to which the Act relates. The Administration shall comprise the following persons: the Director for Maritime Administration, the Registrar of Ships, the Registrar of Seafarers, the Commissioner for Maritime Affairs, and a Surveyor of Ships. The Administration shall be managed by a Commission.

The Director may, for carrying into effect the provisions regarding registration, give such instructions to his officers as to the manner of making entries in the register, as to the execution and attestation of powers of attorney, as to any evidence required for identifying any person, as to the referring to himself of any question involving doubt or difficulty, and generally as to any act or thing to be done in pursuance of this Part, as he thinks fit.

Cabinet may, by order, appoint any person to be the Commissioner of Maritime Affairs and the person so appointed shall perform the functions and discharge the duties of the Registrar under the Act outside Saint Vincent and the Grenadines. The Registrar is tasked by the Act with the maintenance of the register. He shall be responsible for the maintenance of proper records of everything done by him or by his agents and such portion of fees collected and due to the Government shall be duly transmitted. On completion of the registration of a ship, the Registrar of Ships shall grant a certificate of registry comprising such particulars respecting the ship as are specified in the registration regulations.

Part XVII of the Shipping Act deals with limitation and division of liability and is devoted to setting out the legal framework for that purpose. Its main intention is to implement the provisions relating to limitation of liability for maritime claims. Accordingly, this Part does not make provision for the assignment of institutional responsibilities.

### **10.6.3. Legislation on Fisheries Related Matters**

Insofar as legislation on fisheries matters, this Report considered the Fisheries Act, 1986 (Chapter 29), as amended; the Fisheries Regulations, 1987, as amended; together with the High Seas Fishing Act, 2001 (Chapter 61), as amended.

Under the **Fisheries Act, 1986, as amended**, the Minister to whom matters relating to fisheries have been assigned shall take such measures as he thinks fit under the Act to promote the management and development of fisheries, so as to ensure the optimum utilisation of the fisheries resources in the fishery waters for the benefit of Saint Vincent and the Grenadines. He may appoint a fisheries advisory committee to advise on the management and development of fisheries.

The Minister is empowered to enter into arrangements with other countries in the region or with any competent regional organization which provide, *inter alia*, for “the harmonisation of licensing procedures and conditions in respect of foreign fishing vessels”. Moreover, for the purpose of giving effect to any arrangement or agreement so entered, the Minister, may, by order, in the Gazette “authorise any competent regional organisation designated in the order to issue fishing licences in respect of foreign fishing vessels on behalf of the Minister within the limits set out in the order”. More importantly, such arrangements may provide, *inter alia*, for “such other co-operative measures as appropriate, including measures for promoting the welfare of fishermen and the insurance of fishing vessels and gear”.

The Minister may issue a foreign fishing licence authorising a foreign fishing vessel to be used in the fishery waters for such fishing or related activities as may be specified in the licence. The Minister may make regulations generally for the management and development of fisheries in the fishery waters.

It is the duty of the Chief Fisheries Officer to keep a register of every local fishing vessel in respect of which there is in existence a valid certificate of registration, and shall cause to be entered in the said register the place of mooring or beaching of such fishing vessel, and such other particulars as may be prescribed in respect of such fishing vessel. The Chief Fisheries Officer may at any time inspect, without notice, any local fishing vessel for the purpose of satisfying himself that such fishing vessel is being maintained in a seaworthy condition.

The Chief Fisheries Officer shall, to the extent he deems it practicable, provide to any local fisheries management authority such assistance as may be reasonably necessary for the performance of its functions.

Regarding enforcement, the right to stop and board any local fishing vessel for the purpose of verifying that it holds a valid certificate of inspection and that the vessel and its equipment are being

maintained in accordance with the prescribed standards is vested in any authorised officer. For adjudication purposes, in normal circumstances, a person aggrieved by the refusal or revocation of an approval for a licence may appeal to the High Court.

Pursuant to the power to make regulations, the Minister enacted the abovementioned fisheries regulations.

The **High Seas Fishing Act, 2001** allocates its administration to the Chief Fisheries Officer who shall be responsible for, *inter alia*, maintaining a record of all fishing vessels in respect of which high seas fishing licences have been issued under the Act; the issue, variation, suspension and revocation of licenses for fishing in the high seas; the collection of fees in respect of licences of fishing vessels.

#### 10.6.4. Legislation on Insurance Related Matters

Insofar as legislation on insurance related matters, this Report considered mainly the Marine Insurance Act, 1989. The Motor Vehicle Insurance (Third Party Risks) Act, 2003 and the Convention on Oil Pollution Act, 2002, as amended were also considered, particularly insofar as they relate to a requirement of compulsory insurance.

The **Marine Insurance Act, 1989** is devoted to setting out the legal framework for marine insurance contracts. Accordingly, it does not make provision for the assignment of institutional responsibilities. However, the **Motor Vehicle Insurance (Third Party Risks) Act, 2003** may offer some insight into how insurance at a small scale may be introduced in a compulsory manner. In this respect, it is important to note that the implementation of this Act is largely delegated to the Licensing Authority. On a larger scale, the **Convention on Oil Pollution Act, 2002** provides for the implementation of the CLC and Fund Convention, dealing, *inter alia*, with Civil Liability for Oil Pollution and the requirement of compulsory insurance.

The procedure for the issue of such certificates and their validity are to be determined by the Registrar of Ships. The Registrar of Ships shall ensure the compliance with Article VII(11) of the 1992 Civil Liability Convention. Where a ship to which this Act applies, enters or leaves a port or terminal or terminal installation within the territory of Saint Vincent and the Grenadines without carrying a valid certificate of insurance under the Convention, the owner and the master of that ship each commits an offence and shall be liable upon conviction to the payment of a fine.

#### 10.7. OVERALL ASSESSMENT

There are several pieces of legislation that may be relevant for the introduction of a compulsory insurance requirement. In fact, some of the provisions already enacted provide support for such requirement. For example, as recorded earlier, Section 4 of the Shipping Act, 2004, as amended provides that “[e]very Saint Vincent and the Grenadines ship shall carry insurance cover against risks of loss or damage to third parties”. Provided that this provision applies to fishing vessels, such evidence could be in the form of an insurance policy. Similarly, Section 15(2) of the Port Authority Act, 1987, as emended, provides that “[a]ll users of the port facilities are required to carry bodily injury liability insurance and property damage liability insurance, and to furnish a certificate of insurance to the Port Manager” and, as mentioned above, such users may include fishing vessels.

However, bearing in mind that there is no express reference to compulsory insurance for fishing vessels, what could be the best entry point for such requirement? In this respect, it may be important to look at the Fisheries Act, 1986, as amended, Section 8 of which provides that “[n]o foreign fishing vessel shall be used for fishing or related activities in the fishery waters without a valid foreign fishing licence issued under this section” and Section 11 continues “[n]o local fishing vessel shall be used for fishing or related activities in the fishery waters without a valid licence issued under this section in respect of that vessel”.

Noting the requirement of registration for a vessel to be used for fishing or related activities in the waters of Saint Vincent and the Grenadines, and the further requirement of a licence for that purpose (which may be relevant in cases of vessels that are not subject to registration), it seems reasonable that the entry point for a requirement of compulsory insurance may be inserted as a requirement for the issue of the licence (similar to the required certificate of inspection).

The fact that some fishing vessels are very small should not be a deterrent. The introduction of compulsory insurance for fishing vessels could follow a similar approach of the Motor Vehicle Insurance (Third Party Risks) Act, 2003 in relation to motor vehicles.

The High Seas Fishing Regulations included in the Fishing Act, 2001, as amended contain important provisions for the purpose of compulsory insurance. Regulation 4 provides that “the Minister may, based on the previous or present conditions of which the owner of a fishing vessel is associated, **request him to enter into a security by bond or a deposit so as to ensure compliance with the terms and conditions of a fishing licence**”. Regulation 6 stipulates the general conditions for issuance of licence, including “**that the fishing vessel has sufficient insurance coverage to protect the owner of the vessel, any authorised officer and their interests and to indemnify third parties against loss or damage and to protect their own interest**”. These provisions may be used as a model for similar provisions in relation to licences be issued to local and foreign fishing vessels fishing in fisheries waters of Saint Vincent and the Grenadines.

Insofar as the limit of compulsory insurance is concerned, this would certainly be subject to debate due to the potential financial implications. However, there are a few things that could be borne in mind in this respect.

1. Saint Vincent and the Grenadines is not a Party to the Convention on Limitation of Liability for Maritime Claims, 1976.
2. The Shipping Act, 2004, as amended allows (in section 338) (1) the shipowner to cap his liability to the following amounts:
  - (a) 166 667 SDR for a ship with a tonnage not exceeding three hundred tonnes;
  - (b) 333 000 SDR for a ship with a tonnage from three hundred and one tonnes to five hundred tonnes; and
  - (c) for a ship with a tonnage in excess of five hundred tonnes, the following amounts in addition to that mentioned in paragraph (b)—
    - (i) for each ton from five hundred and one to three thousand tonnes, five hundred SDR,
    - (ii) for each ton from three thousand and one to thirty thousand tonnes, three hundred and thirty-three SDR,
    - (iii) for each ton from thirty thousand and one to seventy thousand tonnes, two hundred and fifty SDR; and
    - (iv) for each ton in excess of seventy thousand tonnes, one hundred and sixty-seven SDR.
3. Section 338 (2) details that the limits of liability for claims other than those provided for in section 335, arising on any distinct occasion, shall be calculated in respect of any other claims as follows:
  - (a) eighty three thousand three hundred and thirty-three SDR for a ship with a tonnage not exceeding three hundred tonnes;
  - (b) one hundred and sixty-seven thousand SDR for a ship with a tonnage from three hundred and one tonnes to five hundred tonnes;
  - (c) for a ship with a tonnage in excess of five hundred tonnes the following amounts in addition to that mentioned in paragraph (b)—

- (i) for each ton from five hundred and one to thirty thousand tonnes, one hundred and sixty-seven SDR,
  - (ii) for each ton from thirty thousand and one to seventy thousand tonnes, one hundred and twenty-five SDR, and
  - (iii) for each ton in excess of seventy thousand tonnes, eighty-three SDR.
- 4. To protect smaller vessels, Section 338(3) provides that “[t]he Minister may by Order amend the limits of liability for ships with a tonnage not exceeding three hundred tonnes”.
- 5. However, in so far as claims for loss of life or personal injury of a person who is on board or employed under a contract of service governed by the laws of Saint Vincent and the Grenadines, limitation of liability is not allowed and, therefore, the amount of compulsory insurance may be higher than the limits stated above.

## 11. TRINIDAD AND TOBAGO

### 11.1. INTRODUCTION

The analysis of the Legal Framework of Trinidad and Tobago covers legislation governing the maritime zones wherein the State enjoys sovereignty, sovereign rights, or jurisdiction in relation to fishing related matters (*i.e.* the *Territorial Sea Act, 1969*; the *Continental Shelf Act, 1969*; the *Archipelagic Waters and Exclusive Economic Zone Act, 1986*; the *Continental Shelf (Amendment) Act, 1986*; the *Archipelagic Baselines of Trinidad and Tobago Order, 1988*), legislation on shipping related matters – including *inter alia* ship registration and limitation of liability (*i.e.* the *Shipping Act, 1987, as amended*), legislation on fisheries matters (*i.e.* the *Fisheries Act, 1916, as amended*) as well as legislation on insurance related matters (*i.e.* the *Marine Insurance Act, 1959*, the *Insurance Act, 2018*. In this category, the *Motor Vehicles Insurance (Third-Party Risks) Act, 1933, as amended* was considered, particularly insofar as it relates to a requirement of compulsory insurance).

### 11.2. LEGISLATION ON MARITIME ZONES

#### 11.2.1. Territorial Sea Act, 1969; Archipelagic Baselines of Trinidad and Tobago Order, 1988; and Archipelagic Waters and Exclusive Economic Zone Act, 1986

The abovementioned Acts provide for the establishment of maritime boundaries and jurisdiction of Trinidad and Tobago. The Territorial Sea Act and the Archipelagic Baselines of Trinidad and Tobago Order establish the inner limit from which the rest of maritime zones are measured. The significance of the Archipelagic Waters and Exclusive Economic Zone Act is stressed, particularly in relation to the EEZ. This is important because beyond the territorial sea (which is subject to the sovereignty of the State), there is a possibility of claiming an EEZ where specific sovereign rights over the exploration and exploitation, conservation and management of the living and non-living natural resources of the waters superjacent to the seabed and limited jurisdiction is recognized by the international law of the sea. In this respect, the Archipelagic Waters and Exclusive Economic Zone Act establishes the EEZ, having as its innermost limit the outermost limit of the territorial sea and extending up to 200 nautical miles from the baselines (Section 14).

Section 22 describes the prohibited activities without consent in the EEZ:

No State, international organization, nor person, shall without the consent in writing of the President signified by Notice engage within the exclusive economic zone in any of the following activities:

- (a) The exploration and exploitation, conservation and management of living and non-living natural resources;
- (b) The production of energy from water, currents and winds;
- (c) The establishment and use of artificial islands, installations and structures;
- (d) Marine scientific research;
- (e) The protection and preservation of the marine environment; and
- (f) Any other such activity.

It is noteworthy that the abovementioned provisions in relation to the activity of fishing, shall not apply to the right of a citizen of Trinidad and Tobago or a body incorporated in Trinidad and Tobago in which at least 51 per cent of the shares are owned by citizens of Trinidad and Tobago (Section 23).

According to Section 32, the President may make Regulations for implementing the provisions of the Act, *inter alia*, licensing of the master and members of the crew of a foreign fishing craft, fishing craft and equipment; payment of licence fees; determination of the species and quotas of fish which may be caught; and the specifying of information required of fishing craft, including catch, and effort statistics and craft position reports.



Fishing in the EEZ is regulated by Sections 25-31 of the Act, including the permission to fish, the content of the licence, as well as the surveillance powers (further details are given under 5.4.2 below).

### 11.3. LEGISLATION ON SHIPPING RELATED MATTERS

#### 11.3.1. Shipping Act, 1987, as amended

The Shipping Act is an all-encompassing Act dealing with ships, crews, safety at sea and with matters consequential, related or incidental thereto. It is thus an important Act for the purposes of this Report. Section 2 of the Act provides a number of definitions that are important for the topic subject of this Report. Amongst such definitions it is important to mention the following:

[...]

“fishing vessel” means a vessel used or intended to be used for catching fish for gain;

“foreign ship” means a ship which is not a Trinidad and Tobago ship;

[...]

“licensed Trinidad and Tobago ship” means a ship that is licensed pursuant to section 40(1);

[...]

“ship” includes every description of vessel used in navigation and not propelled by oars;

“Trinidad and Tobago ship” means a ship which is (a) registered or licensed in Trinidad and Tobago under this Act; or (b) exempted under this Act from being registered or licensed;

“vessel” includes any ship or boat or any other description of vessel used or designed to be used in navigation;

[...]

Upon reading the above definitions it is clear that the Shipping Act applies to fishing vessels (at least in some respects). Of particular importance is the requirement of registration. In this respect, Section 3(1)(a) and (b) provides that no ship shall trade in or from the waters of Trinidad and Tobago unless the ship is a Trinidad and Tobago ship; or is provided with a certificate of foreign registry or other document similar or equivalent to that required by the Act. Very importantly, Section 3(1)(c) provides that “[e]very Trinidad and Tobago ship trading in any waters and every ship trading in or from the waters of Trinidad and Tobago **shall provide evidence of financial responsibility against risks of damage to third parties in such a manner as may be prescribed**”. This provision may pave the way for the introduction of the requirement of compulsory insurance for fishing vessels.

Section 5(1) provides that a ship is required to be registered as a Trinidad and Tobago ship if the ship is owned wholly by persons qualified to own a registered Trinidad and Tobago ship under Section 4 of the Act, unless the ship is recognised by the law of a State other than Trinidad and Tobago as a ship of that State, and is by the law of that State exempted from registration; the ship is exempted from registration by Notice issued by the Minister; the ship is required to be licensed and operates solely within the waters of Trinidad and Tobago; or the ship is exempt from being licensed. Section 5(6) provides that a ship so not registered shall not be recognised as a Trinidad and Tobago ship, and is not entitled to the rights and privileges accorded to Trinidad and Tobago ships under the Act.

Section 14 requires the Registrar of Ships to keep a register, including the following books “[...] a register book for fishing vessels” (Section 14(1)(b)). In this respect, it is noteworthy that “[t]he Minister may make Regulations prescribing the class of vessels required to be registered in the register book for fishing vessels” (Section 18).

Section 22 provides that every ship shall, before registration, be surveyed by a surveyor. The surveyor shall deliver to the Registrar a certificate of survey. On completion of the registration of a ship, the Registrar shall grant a certificate of registry (Section 29). Besides the requirement of a survey, a requirement to maintain compulsory third party liability insurance may be imposed as a precondition to registration. Whilst this suggestion will have an impact on initial registration, it is also advisable to

link the requirement of compulsory insurance to the granting of a fishing licence to ensure continuity of the required insurance.

Another important topic for the purpose of compulsory insurance, at least in so far as determining the amount of possible financial exposure of fisherfolk in relation to damages caused by their activities, is that of limitation of liability. In this respect, Part XVIII of the Act deals with Limitation and Division of Liability.

Although Trinidad and Tobago is a State Party to the Convention on Limitation of Liability for Maritime Claims, 1976, this fact is not mentioned in the Shipping Act and the Act **does not** reflect the provisions of the Convention. The Convention, together with the 1996 Protocol thereto (to which Trinidad and Tobago is not yet a party) set out the legal framework for the exercise of the right to limit liability for maritime claims. It is noteworthy that claims in the maritime field may be very high (even to the point of bringing a shipowner to bankruptcy), hence the right to limit liability has been instrumental in the promotion of the maritime industry. However, even the limits provided are still high for the smallest vessels leading to a high potential financial exposure.

Trinidad and Tobago provides for its own limits in Section 359:

- (1) Where any of the following events occur without the actual fault or privity of the owner of a ship, whether or not it is a Trinidad and Tobago ship, namely:
  - (a) where any loss of life or personal injury is caused to any person on board that ship;
  - (b) where any damage or loss is caused to any goods, merchandise or other things whatsoever on board that ship;
  - (c) where any loss of life or personal injury is caused to any person not on board that ship through
    - (i) the act or omission of any person, whether on board that ship or not, in the navigation or management of the ship, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers; or
    - (ii) any other act or omission of any person on board that ship; or
  - (d) where any loss or damage is caused to any property other than property described in paragraph (b) or any rights are infringed through
    - (i) the act or omission of any person, whether on board that ship or not, in the navigation or management of the ship, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers; or
    - (ii) any other act or omission of any person on board that ship, such owner shall not be liable for damage beyond the amounts specified in subsection (2).
- (2) The amounts referred to in subsection (1) are
  - (a) in respect of loss of life or personal injury, either alone or together with any loss or damage to property or any infringement of any rights mentioned in paragraphs (b) and (d) of subsection (1), an aggregate amount equivalent to 210 units of account for each ton of that ship's tonnage; and
  - (b) in respect of any loss or damage to property or any infringement of any rights mentioned in the said paragraphs (b) and (d) of subsection (1), an aggregate amount equivalent to 70 units of account for each ton of that ship's tonnage.

In this respect, it is important to note that, unlike other countries subject of this Report (e.g. Barbados, Saint Christopher and Nevis, Saint Vincent and the Grenadines), Trinidad and Tobago has not exercised the right granted by Article 15(2) of the Convention to protect vessels of less than 300 tonnes. This is very important as it leaves the owners of very small fishing vessels exposed to the same limits of liability as the owners of larger commercial vessels. It is, however, remarkable that Section 363 provides that "[f]or the purposes of sections 359 and 360, the tonnage of any ship that is less than three hundred tonnes shall be deemed to be three hundred tonnes". This provision, however,

does not seem to have any impact (as envisaged in the Convention) since, unlike the Convention, the Act does not include a limit for a first tier of tonnage (it simply sets out an amount for each ton of that ship's tonnage).

It is also important to note that Trinidad and Tobago does not allow the right to limit liability in respect of, *inter alia*, the following claims:

359 (4) This section shall not apply to limit the liability of an owner of a ship in respect of any loss of life or personal injury caused to or any loss of or damage to property or any infringement of any right of a person who is employed on board or in connection with a ship under a contract of service if that contract is governed by the law of any State other than Trinidad and Tobago and that law does not set any limit to that liability or sets a limit exceeding that set by this section.

This latter provision may protect the full recovery for claims from the crew of fishing vessels, but only if they are not from Trinidad and Tobago.

### **11.3.2. Shipping (Registration of Ships) Regulations (Cap. 50:10, 2009)**

Pursuant to the power to make regulations granted by section 31 of the Shipping Act, the Minister responsible for Shipping enacted the **Shipping (Registration of Ships) Regulations, 2009**. These Regulations stipulate the rules for first registration, changes and alterations, transfer, commission and mortgage and registration of government ships and abandoned ships.

## **11.4. LEGISLATION ON FISHERIES RELATED MATTERS**

### **11.4.1. Fisheries Act, 1916, as amended**

Trinidad and Tobago Fisheries Legislation is contained in *An Act to regulate fishing in the waters of Trinidad and Tobago*. As such it is of limited assistance for the purposes of this Report. This notwithstanding, it is worth noting Section 9(1), which provides that: "The Fisheries Officer and any person authorised in writing by him may inspect and measure any fishing net which he may see in any part of Trinidad and Tobago, whether or not the same has been seen in actual use, and may, without warrant, enter into or upon any premises between the hours of seven o'clock in the morning and five o'clock in the afternoon in or upon which there shall be any fishing net visible for the purpose of inspecting and measuring the same". This type of enforcement measure may be considered once the requirement of third-party compulsory insurance is approved.

The Fisheries Act is currently under review. The most recent draft of the Fisheries Management Bill dates from May 2019. It defines a "fishing vessel" as "any vessel, ship or other craft which is used, equipped to be used, or of a type that is normally used for fishing or related activities", while a "foreign fishing vessel" is "any fishing vessel that is not a Trinidad and Tobago fishing vessel". A "Trinidad and Tobago fishing vessel" is defined as "a fishing vessel registered pursuant to shipping legislation and any vessel entitled to fly the flag of Trinidad and Tobago" and a "vessel" as "any boat, ship, hovercraft or other water-going craft". It is noteworthy the definition of "full insurance coverage", which means "insurance cover for:

- (a) personal injury;
- (b) loss of life;
- (c) loss of equipment and personal effects;
- (d) medical coverage, including medical evacuation;
- (e) repatriation costs; and
- (f) losses arising from the action, inaction or activity of an authorised observer whilst on board or in the service of the vessel".

Regarding foreign fishing vessels licences, the Act contains no mention of a requirement of Insurance.<sup>4</sup> In fact, Section 94(2) imposes the only limitation on the issue of a licence by providing that “[a] foreign vessel shall not (a) be used for fishing or for fishing related activities or other activity provided for in this Act; or (b) undertake fishing or fishing related activities, except in accordance with a valid licence issued pursuant to this Act and an applicable access agreement”.

Regarding local fishing vessels licences, section 64(1) provides that no local fishing vessel shall be used for commercial fishing in the fishery waters of Trinidad and Tobago unless the vessel has been entered on the Record of Trinidad and Tobago Fishing Vessels and a Trinidad and Tobago fishing vessel licence has been issued. According to Section 80, no local fishing vessel shall be used for commercial fishing or fishing related activities on the high seas unless the vessel has been entered on the Record of Trinidad and Tobago Fishing Vessels; and there is a valid high seas fishing authorisation in relation to it. Like section 94 there is no mention of a requirement of insurance.

In accordance with Section 56, the Director shall establish and maintain a Record of all Trinidad and Tobago fishing vessels registered under the Shipping Act. A person who owns a Trinidad and Tobago fishing vessel or who is desirous of operating such vessel in the fishery waters or beyond such waters, whether for commercial gain or recreational purposes, shall have his vessel entered on the Record of Trinidad and Tobago Fishing Vessels (Section 57). An application for a certificate of record shall be made to the Director who, upon being satisfied that the vessel is in compliance with the requirements under the Act and an inspection has been conducted, issue the owner with such certificate.

A final provision of the Fisheries Act which is of relevance to this Report deals with the powers of authorized officers. In this respect, section 143 provides that: “For the purposes of the enforcement of this Act, [...] an authorised officer may (a) make or take copies of any record or document, and for this purpose take possession of and remove from the place where they are kept any such record or document, for a period of time as is reasonable in the circumstances.”

#### **11.4.2. Archipelagic Waters and Exclusive Economic Zone Act, 1986**

Regarding foreign fishing vessels licences, the Archipelagic Waters and Exclusive Economic Zone Act contains no mention of a requirement of Insurance. In fact, Section 26(1) imposes the only limitation on the issue of a licence by providing that “[n]o foreign fishing craft nor the master and members of the crew of a foreign fishing craft may engage in fishing in the exclusive economic zone, the territorial sea and the archipelagic waters without a licence issued by the Minister to whom responsibility for fisheries is assigned”. This provision shall not apply to a foreign fishing craft in which at least 51 per cent of the ownership thereof is vested in citizens or corporations of Trinidad and Tobago (Section 27). Any foreign vessel fishing without a licence is guilty of an offence and liable on summary conviction in the case of an offence in the EEZ to a fine of USD 50 000 and in the case of an offence in the territorial sea and the archipelagic waters to a fine of USD 10 000 and imprisonment for six months and in addition in all cases to suspension or cancellation of the licence, forfeiture of the craft, equipment and all the fish found on board.

Regarding local fishing vessels, there is no mention of a requirement of licence.

### **11.5. LEGISLATION ON INSURANCE RELATED MATTERS**

#### **11.5.1. Marine Insurance Act, 1959 (Cap 711)**

Heavily influenced by the UK Marine Insurance Act 1906, the Marine Insurance Act provides the basic legal framework for the marine insurance business. Section 5 defines a contract of marine insurance as “a contract whereby the insurer undertakes to indemnify the assured in manner and to the

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<sup>4</sup> The definition of “full insurance” applies to authorised observer according to Section 147.

extent thereby agreed against marine losses, that is to say, the losses incident to marine adventure”. This definition is crucial as it limits the scope of an insurance contract. The Act then goes on to provide the legal framework for a marine insurance contract and, though it does not deal with the compulsory nature of any type of insurance, once adopted, the contracts for compulsory insurance in relation to fisheries will be subject to the provisions of this Act.

#### **11.5.2. Insurance Act, 2018 and Motor Vehicles Insurance (Third-Party Risks) Act, 1933, as amended**

The Insurance Act aims to revise the law regulating the carrying out of insurance business in Trinidad and Tobago in order to strengthen the protection given to policy holders under the existing Act; to expand the existing regulatory framework to include the regulating of all insurance intermediaries; and to give effect to matters related thereto. As such it is of a very general nature and of limited assistance for the purposes of this Report.

The Motor Vehicles Insurance (Third-Party Risks) Act, 1933, as amended, which makes provision for the protection of third parties against risks arising out of the use of motor vehicles, may offer some insight into how insurance at a small scale may be introduced in a compulsory manner.

Section 3 (1) introduces compulsory insurance in relation to motor vehicles by providing that “[s]ubject to this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle or licensed trailer on a public road unless there is in force in relation to the user of the motor vehicle or licensed trailer by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Act”. Subsection (2) then recognizes any contravention to the latter provision as an offence and imposes a penalty (which may include a fine, imprisonment, or both). Additionally, this subsection provides that any person committing an offence may be disqualified from holding or obtaining a driving licence under the Act for a period of three years from the date of the conviction. The Act then deals in detail with the requirements of compulsory insurance for motor vehicles.

It is worth highlighting the attempts to adopt an Act to provide for powers and jurisdiction in relation to pollution of the seas from ships and liability and compensation for pollution damage and matters incidental thereto. The Shipping (Marine Pollution) Bill, 2004 was never approved. However, it is interesting to note that Part VII tried to implement the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992 and included the requirement of compulsory insurance (Section 194).

### **11.6. INSTITUTIONAL FRAMEWORK**

#### **11.6.1. Legislation on Maritime Zones**

The Government entities tasked with the implementation of the legal framework of Trinidad and Tobago vary depending on the legislation in question as well as on the relevant task. For example, the **Archipelagic Waters and Exclusive Economic Zone Act, 1986**, empowers the Minister responsible for External Affairs, by Order, and for the purpose of implementing an international agreement or the award of an international body, to reduce the outer limits of the EEZ.

#### **11.6.2. Legislation on Shipping Related Matters**

Legislation of shipping matters is found in the **Shipping Act, 1987, as amended**. This is an all embracing Act which covers a diversity of areas including the ship, the crew, passenger ships, safety, wrecks and salvage, regulation of diving operations, limitation and division of liability, conventions and legal proceedings, maritime liens and other matters. Of particular importance for the purposes of this Report are the parts dealing with ship registration and limitation of liability.

In general, the Minister responsible for Shipping shall be responsible for the administration and implementation of the Act. He may make Regulations for matters relating to the obligation to register ships and failure to comply therewith and the manner in which Trinidad and Tobago government ships, or any class of those ships may be registered under the Act.

The Minister may by Notice exempt generally or specifically from registration, a licensed Trinidad and Tobago ship or a class thereof or a ship or a class of ship that is required to be licensed when operating outside the waters of Trinidad and Tobago. He may by Order declare any other port of Trinidad and Tobago as a Port of Registry.

The Registrar is tasked by the Act with issuing a certificate of registry to Trinidad and Tobago ships upon completion of the registration. He shall keep such register books as may be deemed necessary, including a register book for fishing vessels.

Part XVIII of the Shipping Act deals with Limitation and Division of Liability and is devoted to setting out the legal framework for that purpose. Accordingly, this Part does not make provision for the assignment of institutional responsibilities.

### **11.6.3. Legislation on Fisheries Related Matters**

Insofar as legislation on fisheries matters, this Report considered the Fisheries Act, 1916, as amended and the Archipelagic Waters and Exclusive Economic Zone Act, 1986. Under the **Fisheries Act**, the Fisheries Officer shall carry out the provisions of the Act.

The **Fisheries Management Bill** sets forth a new institutional framework. The Minister responsible for Fisheries is tasked with authorising officers for the purposes of the Act. He may issue, suspend or cancel High Seas fishing authorization and foreign fishing vessel licences.

Many of the functions of the Fisheries Management Bill rest on the shoulders of the Director, who shall provide the Minister with technical and administrative advice. He shall establish and maintain a record to be known as the “Record of Trinidad and Tobago Fishing Vessels”. The Director shall issue to the owner of a Trinidad and Tobago fishing vessel, a Certificate of Record evidencing that the vessel has been entered on the Record of Trinidad and Tobago Fishing Vessels. He may also issue the commercial fishing vessel licence.

Regarding enforcement, the right to stop and board any vessel in the fisheries waters for the purpose of the enforcement of the Act is vested in the authorised officers. An authorised officer may, if he believes that a vessel is being or has been used in contravention of the provisions regarding any permit, permission, licence, registration, or certificate issued under the Act, require the master to take the vessel to the nearest available port in Trinidad and Tobago. For adjudication purposes, in normal circumstances, a person aggrieved by a decision of the Minister or the Director may appeal against it to an Appeals Committee.

According to the **Archipelagic Waters and Exclusive Economic Zone Act, 1986**, the Minister responsible for Fisheries shall issue licences for foreign fishing craft and crew to fish in the EEZ, territorial sea, and archipelagic waters of Trinidad and Tobago. He may also issue a Certificate of Exemption to every such foreign fishing craft.

#### 11.6.4. Legislation on Insurance Related Matters

Insofar as legislation on insurance related matters, this Report considered the Marine Insurance Act, 1959 and the Insurance Act, 2018. The Motor Vehicles Insurance (Third-Party Risks) Act, 1933, as amended was also considered, particularly insofar as it relates to a requirement of compulsory insurance.

The **Marine Insurance Act, 1959** is devoted to setting out the legal framework for marine insurance contracts. Accordingly, it does not make provision for the assignment of institutional responsibilities. Similarly, the **Insurance Act, 2018** is of a very general nature and of limited assistance for the purposes of this Report. It is however, important to note that the Central Bank shall be responsible for the general administration of the Insurance Act. The Minister for Finance is given a number of responsibilities, of which it is important to highlight the power to make regulations for giving effect to the Act.

Insofar as the **Motor Vehicles Insurance (Third-Party Risks) Act, 1933** may offer some insight into how insurance at a small scale may be introduced in a compulsory manner. In this respect, it is important to note that the implementation of this Act is largely delegated to the Licensing Authority.

#### 11.7. OVERALL ASSESSMENT

There are several pieces of legislation that may be relevant for the introduction of a compulsory insurance requirement. In fact, some of the provisions already enacted provide support for such requirement. For example, as recorded earlier, Section 3(1)(c) of the Shipping Act, 1987, as amended, provides that “[e]very Trinidad and Tobago ship trading in any waters and every ship trading in or from the waters of Trinidad and Tobago **shall provide evidence of financial responsibility against risks of damage to third parties in such a manner as may be prescribed**”. Provided that this provision applies to fishing vessels, such evidence could be in the form of an insurance policy.

However, bearing in mind that there is no express reference to compulsory insurance for fishing vessels, what could be the best entry point for such requirement? In this respect, it may be important to look at the Archipelagic Waters and Exclusive Economic Zone Act, 1986, Section 26(1) of which provides that “[n]o foreign fishing craft nor the master and members of the crew of a foreign fishing craft may engage in fishing in the exclusive economic zone, the territorial sea and the archipelagic waters without a licence issued by the Minister to whom responsibility for fisheries is assigned”. This provision only applies to foreign fishing vessels. Noting the requirement of a licence, it seems reasonable that the entry point for a requirement of compulsory insurance may be inserted as a requirement for the issue of the licence and extend this obligation to local fishing vessels.

The fact that some fishing vessels are very small should not be a deterrent. The introduction of compulsory insurance for fishing vessels could follow a similar approach of the Motor Vehicles Insurance (Third-Party Risks) Act, 1933.

Insofar as the limit of compulsory insurance is concerned, this would certainly be subject to debate due to the potential financial implications. It is important to highlight the fact that the Shipping Act does not implement the provisions of the Convention on Limitation of Liability for Maritime Claims to which Trinidad and Tobago is a State Party. However, there are a few things that could be borne in mind in this respect.

1. The Shipping Act, 1987 allows the shipowner to cap his liability to the following amounts:
  - (a) in respect of loss of life or personal injury, either alone or together with any loss or damage to property or any infringement of any rights mentioned in paragraphs (b) and (d) of subsection (1), an aggregate amount equivalent to 210 units of account for each ton of that ship's tonnage; and
  - (b) in respect of any loss or damage to property or any infringement of any rights mentioned in the said paragraphs (b) and (d) of subsection (1), an aggregate amount equivalent to 70 units of account for each ton of that ship's tonnage.
2. However, in so far as claims for loss of life or personal injury of a person who is on board or employed under a contract of service governed by the laws of Trinidad and Tobago, limitation of liability is not allowed and, therefore, the amount of compulsory insurance may be higher than the limits stated above.



### Annex 1

#### Status of Conventions which are related to a Compulsory Insurance Requirement amongst CARICOM Countries

	CLC 1969 <sup>1</sup>	CLC 1992 <sup>2</sup>	PAL 1974 <sup>3</sup>	PAL 2002 <sup>4</sup>	LLMC 1976 <sup>5</sup>	LLMC 1996 <sup>6</sup>	Bunkers Convention <sup>7</sup>	Wreck Removal Convention <sup>8</sup>
Barbados	<b>d</b>	<b>x</b>	<b>x</b>		<b>x</b>		<b>x</b>	
Dominica		<b>x</b>	<b>x</b>		<b>x</b>			
Saint Kitts and Nevis	<b>x</b>	<b>x</b>	<b>x</b>	<b>d</b>			<b>x</b>	<b>x</b>
Saint Vincent and the Grenadines	<b>d</b>	<b>x</b>					<b>x</b>	
Trinidad and Tobago		<b>x</b>			<b>x</b>			
Antigua and Barbuda	<b>d</b>	<b>x</b>			<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
Bahamas	<b>d</b>	<b>x</b>	<b>x</b>		<b>x</b>		<b>x</b>	<b>x</b>
Belize	<b>d</b>	<b>x</b>	<b>d</b>	<b>x</b>			<b>x</b>	<b>x</b>
Grenada		<b>x</b>					<b>x</b>	
Guyana	<b>x</b>	<b>x</b>	<b>x</b>		<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
Haiti								
Jamaica		<b>x</b>			<b>x</b>	<b>x</b>	<b>x</b>	
Montserrat								
Saint Lucia		<b>x</b>			<b>x</b>	<b>x</b>	<b>x</b>	
Suriname								

**Notes:**

**(x) State Party**

**(d) denounced**

1. International Convention on Civil Liability for Oil Pollution Damage, 1969.

2. International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Liability Convention).  
Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.

3. Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974.

4. Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974.

5. Convention on Limitation of Liability for Maritime Claims, 1976.

6. Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976.

7. International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

8. Nairobi International Convention on the Removal of Wrecks, 2007.

## Annex 2

### Table of National Legislation with Categorisation of Relevance for a Possible Entry Point of a Compulsory Insurance Requirement for Fishing Vessels and Identification of the Relevant Lead Agency for this Purpose<sup>5</sup>

#### BARBADOS

Legislation	Possible Entry Point	Lead Agency
Marine Boundaries and Jurisdiction Act, 1978	N/A	
Coastal Zone Management Act, 1998 (Cap 394)	N/A	
Shipping Act, 1994 (Cap 296)	High	
Fisheries Act, 1993 (Cap 391)	High	
Fisheries (Management) Regulations, 1998	N/A	
Marine Insurance Act, 1979 (Cap 292)	N/A	
Insurance Act, 1997 (Cap 310) and Road Traffic Act, 1981 (Cap 295)	N/A	
Shipping Oil Pollution Act, 1994 (Cap 296A) SOPA	N/A (as it is limited to oil pollution by tankers)	

#### DOMINICA

Legislation	Possible Entry Point	Lead Agency
Territorial Sea, Contiguous Zone, Exclusive Economic and Fishery Zones Act, 1981	N/A	
Registration of Ships (Amendment) Act, 1996	Medium	
Fisheries Act, 1987	High	
Insurance Act, 2012 and Motor Vehicles Insurance (Third-Party Risks) Act, 1988	N/A	
International Maritime (Amendment) Act, 2002	<ul style="list-style-type: none"> <li>• Medium (insofar as Registration is concerned)</li> <li>• N/A in Chapter 6 (as it is limited to oil pollution by tankers)</li> </ul>	
Marine Safety Circular CD-MSC 08-08 Rev01	Medium (The requirement of compulsory insurance is included for ships of more than 1 000 tonnes to which the Bunker Convention applies, which covers fishing vessels of that tonnage)	

<sup>5</sup> The relevant lead agency will be determined in consultation with the stakeholders during the meeting in Barbados.

**SAINT KITTS AND NEVIS**

<b>Legislation</b>	<b>Possible Entry Point</b>	<b>Lead Agency</b>
Maritime Areas Act, 1984	N/A	
Merchant Shipping Act, 2002	<ul style="list-style-type: none"> <li>• High (insofar as Registration is concerned)</li> <li>• N/A in Part XIV (as it is limited to oil pollution by tankers)</li> </ul>	
Fisheries, Aquaculture and Marine Resources Act, 2016	High	
Fisheries Regulations, 1995	Medium to High	
Insurance Act, 2009 and Motor Vehicles Insurance (Third-Party Risks) Act	N/A	
Marine Pollution Management Act, 2002	N/A (as it is limited to oil pollution by tankers)	

**SAINT VINCENT AND THE GRENADINES**

<b>Legislation</b>	<b>Possible Entry Point</b>	<b>Lead Agency</b>
Maritime Areas Act, 1983 (Chapter 464), as amended	N/A	
Shipping Act, 2004 (Chapter 363), as amended	High	
Port Authority Act, 1987 (Chapter 362), as amended	Medium to High	
Fisheries Act, 1986 (Chapter 59), as amended	High	
Fisheries Regulations, 1987, as amended	Medium	
High Seas Fishing Act, 2001 (Chapter 61), as amended	High (High Seas Fisheries Regulations)	
Marine Insurance Act, 1989 (Chapter 308)	N/A	
Motor Vehicle Insurance (Third Party Risks) Act, 2003 (Chapter 309)	N/A	
Convention on Oil Pollution Damage Act, 2002 (Chapter 347)	N/A (as it is limited to oil pollution by tankers)	

**TRINIDAD AND TOBAGO**

<b>Legislation</b>	<b>Possible Entry Point</b>	<b>Lead Agency</b>
Territorial Sea Act, 1969; Archipelagic Baselines of Trinidad and Tobago Order, 1988; and Archipelagic Waters and Exclusive Economic Zone Act, 1986	N/A	
Shipping Act, 1987, as amended	High	
Shipping (Registration of Ships) Regulations, 2009	N/A	
Fisheries Act, 1916, as amended	High	
Marine Insurance Act, 1959 (Cap 711)	N/A	
Insurance Act, 2018 and Motor Vehicles Insurance (Third-Party Risks) Act, 1933, as amended	N/A	

## 12. CONCLUSIONS

The assessment of legal frameworks in five Caribbean countries (Barbados, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Trinidad and Tobago) in terms of entry points for introducing fishing vessel insurance, was carried out in 2019. It showed that in each of the countries there are several pieces of legislation that may be relevant for the introduction of a compulsory insurance requirement for fishing vessel insurance. The acts or regulations on which compulsory legislation for fishing vessel insurance can be based on are often found in maritime, shipping, insurance or fisheries legislation.

The basis for compulsory third party liability insurance in the maritime industry is generally established in key international instruments, such as the Bunkers Convention, the Wreck Removal Convention, and the EU Directive 2009/20/EC. Third party liability insurance for vessels in the categories of 300 gross tonnes or more is made mandatory by these conventions, which have been ratified by most of the Caribbean countries.

The benefits of introducing compulsory third party liability insurance for everyone involved in the fisheries industry (claimants, shipowners, and society in general) are large, in the sense that it provides a safety net and covers claims related to personal injury and death (incl. repatriation and maintenance); liability toward passengers and their luggage; cargo loss and damage; collisions, wreck removal (required by law); pollution, loss of property on the insured vessel, damage to fixed and floating objects and towage.

Recommendations have been made by fisheries authorities throughout the Caribbean for introducing third party liability insurance for commercial fishing vessels. Fisherfolk organizations are generally supportive of such insurance, as it reduces significantly the vulnerability of fishers and their families to shocks caused by accidents in fishing, and will contribute to sustainable livelihoods.

The Stakeholder Meeting on Fisheries Insurance Legislative Frameworks for the Caribbean, held on 15 November 2019 in Barbados, demonstrated large interest among the representatives of fisheries and maritime authorities to introduce third party liability insurance for fishing vessels.

The model regulations, combined with information to support fishers' awareness raising and capacity building on fisheries insurance and supported by some technical and legal assistance, will facilitate the countries to take the next steps for introduction of compulsory third party liability insurance for fishing vessels.

The introduction of compulsory third party liability insurance for fishing vessels in the Caribbean will contribute to improving the working conditions of fishers, their safety and to responsible fishing practices.

## **APPENDICES**

### **Appendix A: Example of COMPULSORY THIRD PARTY LIABILITY INSURANCE FOR FISHING VESSELS (BEST PRACTICE) REGULATIONS 2020**

#### **TABLE OF CONTENTS**

- 1 EXPLANATORY MEMORANDUM TO SUPPORT THE INTRODUCTION OF THE REQUIREMENT OF COMPULSORY INSURANCE IN RELATION TO FISHING VESSELS**
  - 1 Introduction
  - 2 Purpose of the instrument
  - 3 Legislative context
  - 4 Territorial extent and application
  - 5 Policy background
  - 6 Possible consultation
  - 7 Guidance
  - 8 Impact
  - 9 Regulating small business
- 2 COMPULSORY THIRD PARTY LIABILITY INSURANCE FOR FISHING VESSELS REGULATIONS 2020**
  1. Citation and commencement
  2. Interpretation
  3. Application
  4. Compulsory insurance or other financial security
  5. Penalties
  6. Power to detain
  7. Compensation for unjustified detention

## **APPENDIX A: EXAMPLE OF COMPULSORY THIRD PARTY LIABILITY INSURANCE FOR FISHING VESSELS (BEST PRACTICE) REGULATIONS 2020**

### **1 EXPLANATORY MEMORANDUM TO SUPPORT THE INTRODUCTION OF THE REQUIREMENT OF COMPULSORY INSURANCE IN RELATION TO FISHING VESSELS**

#### **1. Introduction**

This explanatory memorandum has been prepared to support the introduction of the requirement of compulsory insurance in relation to fishing vessels.

#### **2. Purpose of the instrument**

The proposed Regulations seek to ensure that owners of all fishing vessels have in place third party liability insurance to cover the vast majority of third party claims (many of these types of claims are described as subject to limitation in the 1976 Convention on Limitation of Liability for Maritime Claims as amended by the 1996 Protocol). The introduction of compulsory insurance for fishing vessels, is thus intended to guard against situations where a fishing vessel owner is liable for third party claims but does not have enough funds to provide compensation.

#### **3. Legislative context**

The proposed Regulations are issued under **[add reference to the Act under which these Regulations are enacted]** to introduce a compulsory third party liability insurance requirement for fishing vessels. The Regulations apply to the owners of all **[add nationality]** fishing vessels, wherever they may be, and owners of all non-**[add nationality]** fishing vessels navigating or carrying out fishing operations in the waters subject to the jurisdiction of **[add country]**, or which call at a port of **[add country]**.

The objective of the proposed Regulations is to provide for compulsory insurance (as is now the shipping industry standard) which covers liability for the vast majority of third party maritime claims.

In the context of the proposed Regulations, a reference to “insurance” is a reference to indemnity insurance, usually of the type provided by Protection and Indemnity (IGP&I) Clubs, or in the case of small fishing vessels, by local insurance companies.

Fishing vessel owners would also have the possibility to provide some other form of financial security (provided that it can be proved that such alternative financial guarantees provide adequate cover for their liabilities). Any fishing vessel owners who wants to rely on the latter type of insurance would have to seek the prior written approval from the **[insert competent national authority]** before the fishing vessel enters the waters of **[add country]**.

#### **4. Territorial extent and application**

The proposed Regulations apply to all of the territory, including the territorial sea, and to the exclusive economic zone **[or equivalent zone]** of **[add country]**.

#### **5. Policy background**

At the moment, there is nothing that obliges owners of small- and medium scale fishing vessels to take out general third party liability insurance. Only owners of large scale fishing vessels over 300 tonnes and 1 000 tonnes are required to take out third party liability insurance in relation to liabilities arising from the Nairobi International Convention on the Removal of Wrecks 2007 and the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, respectively. Consequently, it is impossible to determine for sure whether the owners of small- and medium scale fishing vessels have the financial means necessary to meet their liabilities in the event of an incident.

Fisheries is the #1 in most lists of deadly occupations, based on existing global fatality rates. While accident and fatality rates in many industries and sectors are reducing due to stringent safety measures, this does not appear to be the case in fisheries. Consequently, the burden associated with these accidents and fatalities is placed on the fishing crew, their families and coastal communities. Damage caused by collision between fishing vessels and with other vessels and infrastructures is generally not being compensated. Third party liability insurance in fisheries provides coverage for legal obligations to third parties. The legal liability typically arises from injury, loss of life or damage to another vessel or other property as a result of the operation of a fishing vessel. This third party liability insurance, is locally available for vehicles and vessels, however in the fisheries sector very few owners/operators of the vessels purchase such insurance.

In light of the above, unless the Government intervenes, there remains a risk that the owners of fishing vessels will decide not to take out third party liability insurance. Such decision may be taken in an attempt to cut operational costs to gain a financial advantage over competitors. However, the lack of third party liability insurance could, in the event of an incident, lead to the public sector, businesses and individuals not being able to recover costs associated with dealing with the incident, or to being prevented from obtaining compensation for damages if the owner of the fishing vessel does not have financial means at his disposal to meet his liabilities.

## 6. Possible consultation

It may be desirable to consult the fishing industry on this proposal for applying a compulsory insurance requirement to fishing vessels. This could, after a better understanding of its purpose and effect, result in support to the notion and contents of the proposed Regulations. In particular, it can lead to agreement of the best way to determine who would issue certificates of insurance that provide sufficient proof of the relevant cover. In fact, there may be agreement as to the possibility of owners of fishing vessels providing alternatives to the normal kind of insurance usually provided through the P&I Clubs (e.g. self-insurance or other proof of financial security) necessary for the fishing vessel owner to meet his liabilities.

## 7. Guidance

The **[add competent national authority]** should issue guidance, in the form of a **[add the preferred form of communication]**, notifying stakeholders of the introduction of the compulsory insurance requirement for fishing vessels and the entry into force of the proposed Regulations.

## 8. Impact

To date, it has not been possible to monetise any of the costs and benefits of the proposed Regulations due to the limitations of the available information. However, a qualitative analysis may be conducted to determine whether there will be significant costs to the Government (general shipping practice will indicate that this would not be the case), and whether the local fishing industry would be put at a competitive disadvantage as a result of the proposed Regulations (this may perhaps be limited by making use of legislative measures putting a cap on the potential liability of fishing vessel owners, at least for those fishing vessels of less than 300 tonnes (e.g. through limitation of liability legislation).

It is not envisaged that there will be any impact on the public sector. The **[add competent national authority]** will be required to check that fishing vessels operating in the waters of **[add country]** of entering **[add nationality]** ports carry a certificate of insurance complying with the requirements of the proposed Regulations. Any familiarisation costs are expected to be insignificant, as the necessary training would usually be included in normal Port State Control procedures.

## 9. Regulating small business

Whereas, as stated above, fishing vessels of 300 tonnes and over and 1 000 tonnes and over are already obliged to maintain compulsory insurance in relation to wreck removal claims and bunker oil pollution claims respectively, care must be taken in determining the limit of compulsory insurance of

smaller vessels. This is important as, failure to do so, could create a disproportionate burden on small businesses.

## **2 COMPULSORY THIRD PARTY LIABILITY INSURANCE FOR FISHING VESSELS REGULATIONS 2020**

### **1. Citation and commencement**

(1) These Regulations may be cited as the Compulsory Third Party Liability Insurance for Fishing Vessels Regulations 2020.

(2) These Regulations come into force on **[add date]**.

### **2. Interpretation**

(1) In these Regulations—

“the Act” means the **[add reference to the Act under which these Regulations are enacted]**;

“fishing vessel” means any vessel used or intended for use for fishing or related activities;

“foreign fishing vessel” means any fishing vessel other than a **[add nationality]** fishing vessel;

**[“add other necessary definitions e.g., local fishing vessel, competent administration, authorised officer, etc.”]**

### **3. Application**

(1) These Regulations apply to:

- (a) every **[add nationality]** fishing vessel wherever it may be; and
- (b) every foreign fishing vessel used for fishing or related activities in the territory, including the territorial sea and the exclusive economic zone **[or equivalent zone]** of **[add country]**.

(2) The requirement of compulsory insurance established by these Regulations is without prejudice to any similar requirement established by other national legislation.<sup>6</sup>

### **4. Compulsory insurance or other financial security**

(1) The owner of a fishing vessel to which these Regulations apply shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability for third party claims. The amount of insurance for each and every fishing vessel per incident must be **[“determined by [add competent national authority] / “at least equal to the limits of liability under the applicable national regime”]**, but in all cases not exceeding an amount calculated in accordance with article 6 of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.<sup>7</sup>

(2) Where, to comply with paragraph 1, a fishing vessel owner relies on insurance consisting of proved self-insurance or financial security offering similar conditions of cover in respect of a fishing vessel—

- (a) the fishing vessel owner must provide documentary evidence of the existence of that insurance to the **[add competent national authority]**; and

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<sup>6</sup> This provision aims to cover a possible overlap with the requirement of compulsory insurance established by the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 or the Nairobi International Convention on the Removal of Wrecks 2007, wherever applicable due to the size of the fishing vessel.

<sup>7</sup> It is noteworthy that Barbados, Dominica, and Trinidad and Tobago are state Parties to the Convention on Limitation of Liability for Maritime Claims, 1976. However, none of the countries subject of this study is a State Party to the 1996 Protocol thereto.



(b) that fishing vessel must not be used for fishing or related activities in the territory, including the territorial sea, as well as the exclusive economic zone **[or equivalent zone]** of **[add country]** unless the **[add competent national authority]** has confirmed in writing that the arrangements for self-insurance or financial security offering similar conditions of cover are adequate.<sup>8</sup>

(3) A certificate attesting that insurance or other financial security is in force in accordance with the provisions of these Regulations shall be issued to each fishing vessel licenced to fish in the territory, including the territorial sea and the exclusive economic zone **[or equivalent zone]** of **[add country]** by **[add competent national authority]** after determining that the requirements of paragraph 1 have been complied with.<sup>9</sup> This compulsory insurance certificate shall be in the form of the model set out in Schedule **[add number]** to these Regulations, and shall contain the following particulars:

- (a) name of the fishing vessel, distinctive number or letters / vessel marking / identification, and port of registry;
- (b) gross tonnage of the fishing vessel or length overall (LOA);
- (c) Name and full address of the principal place of business of the fishing vessel owner(s) and/or manager(s)
- (d) Vessel registry number or IMO ship identification number (for vessels over 12 meters in length);
- (e) AIS/VMS (if available);
- (f) Other vessel details including length, beam, draft, type of vessel and year built, constructor/builder and location, type of engine (Kw) and year built, and number of crew
- (g) Date of last survey/stability test
- (h) type and duration of security;
- (i) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (j) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

(4) (a) The **[add competent national authority]** may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform the **[add competent national authority]** of the issue of each certificate. In all cases, the **[add competent national authority]** shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to **[add competent national authority]**.<sup>10</sup>

(5) The certificate shall be in English. However, for vessels that are allowed to fish or operate outside **[add country's]** waters, the text shall include a translation into French or Spanish.

(6) The certificate shall be carried on board the fishing vessel and a copy shall be deposited with **[add name of the authorities who keep the record of the fishing vessel's registry or if a foreign vessel, with the authority who issues or is keeps a register of its fishing licence]**.

<sup>8</sup> Should a country opt not to accept self-insurance, this provision may be deleted and other provisions should be renumbered accordingly.

<sup>9</sup> The countries subject of this study may reach a separate agreement for the mutual recognition of certificates.

<sup>10</sup> This provision may be inserted to decentralize the issue of such certificates to allow foreign fishing vessels to obtain the certificate before entering the waters of the State or for local fishing vessels that may be engaging in fishing activities abroad.

(7) The master of a foreign fishing vessel in the waters of **[add country]**, and the master of any local fishing vessel in or outside the waters of **[add country]**, shall produce on demand by an authorised officer the certificate required by these Regulations.

(8) An insurance or other financial security shall not satisfy the requirements of these Regulations if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 3 before three months have elapsed from the date on which notice of its termination is given to the **[add competent national authority]** unless the certificate has been surrendered to **[add competent national authority]** or a new certificate has been issued within the said period.

(9) The **[add competent national authority]** may make regulations establishing, *inter alia*, the procedures, fees, and conditions for the issue and validity of the certificate.

(10) Nothing in these Regulations shall be construed as preventing the **[add competent national authority]** from relying on information obtained from other States or international organizations relating to the financial standing of providers of insurance or financial security for the purposes of these Regulations. In such cases, the **[add competent national authority]** relying on such information is not relieved of its responsibility as the Authority issuing the certificate required by paragraph 3.<sup>11</sup>

(11) Any claim in respect of third-party liability covered by the insurance required by these Regulations may be brought directly against the insurer or other person providing financial security for the fishing vessel owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the fishing vessel owner) that the fishing vessel owner would have been entitled to invoke, including limitation of liability under **[add the national or international regime applicable in the relevant country (if any)]**. Furthermore, even if the fishing vessel owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with these Regulations. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the fishing vessel owner, but the defendant shall not invoke any other defence, which the defendant might have been entitled to invoke in proceedings brought by the fishing vessel owner against the defendant. The defendant shall in any event have the right to require the fishing vessel owner to be joined in the proceedings.

(12) No **[add nationality]** fishing vessel may operate at any time unless a certificate has been issued under paragraphs 3 or 15.

(13) No foreign fishing vessel may undertake any fishing or related activities in the territory, including the territorial sea and the exclusive economic zone **[or equivalent zone]** of **[add country]**, unless insurance or other security to the extent required by paragraph 1 is in force in respect thereof.

(14) No foreign fishing vessel may enter or leave a port in the territory of **[add country]**, or may arrive at or leave from an offshore facility in its territorial sea, unless insurance or other security to the extent required by paragraph 1 is in force in respect thereof.

(15) If insurance or other financial security is not maintained in respect of a fishing vessel owned by **[add country]**, the provisions of this regulation relating thereto shall not be applicable to such fishing vessel, but the fishing vessel shall carry a certificate issued by **[add competent national authority]**, stating that it is owned by **[add country]** and that the fishing vessel's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 3.

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<sup>11</sup> This provision allows the competent national authority to rely on information provided by foreign insurers.

## 5. Penalties

- (1) The owner of a fishing vessel is guilty of an offence if:
  - (a) a fishing vessel belonging to the owner enters or leaves a port in contravention of regulation 4, or
  - (b) anyone attempts to use that fishing vessel to undertake any fishing or related activities in the territory, including the territorial sea and the exclusive economic zone **[or equivalent zone]** of **[add country]**, or to navigate into or out of a port in contravention of that regulation.
- (2) A fishing vessel owner guilty of an offence under paragraph 1 is liable:
  - (a) on summary conviction, to a fine not exceeding **[add maximum amount]**, or
  - (b) on conviction on indictment to a fine **[add maximum amount]**.
- (3) A master who fails to comply with regulation 7(7) is guilty of an offence and is liable on summary conviction to a fine not exceeding **[add maximum amount]**.

## 6. Power to detain

- (1) A **[add nationality]** fishing vessel may be detained if anyone attempts to operate it in contravention of regulation 4.
- (2) A foreign fishing vessel may be detained if anyone attempts to use it to undertake any fishing or related activities in the territory, including the territorial sea and the exclusive economic zone **[or equivalent zone]** of **[add country]**, in contravention of regulation 4. A foreign fishing vessel may also be detained if anyone attempts to use it to enter or leave a port in the territory of **[add country]**, or may arrive at or leave from an offshore facility in its territorial sea, in contravention of that regulation.
- (3) An officer detaining the fishing vessel must serve on the master of the fishing vessel a detention notice which:
  - (a) states the reason for the detention; and
  - (b) requires the fishing vessel to comply with the terms of the detention notice until it is released by a competent authority.
- (4) Where a foreign fishing vessel is detained the **[add competent national authority]** must immediately inform, in writing:
  - (a) the fishing vessel's flag state administration; or, if this is not possible,
  - (b) the Consul of the State of the flag administration; or, in the Consul's absence,
  - (c) the nearest diplomatic representative of the State of the flag administration.
- (5) The written information referred to in paragraph 4 must set out all the circumstances of the decision to detain the fishing vessel.

## 7. Compensation for unjustified detention

- (1) If, in a dispute relating to the legality of the detention, the fishing vessel owner is able to prove:
  - (a) that the matter complained of did not constitute a valid basis for the authorised officer's opinion; and
  - (b) that there were no reasonable grounds for the issue of the detention notice;
 the fishing vessel owner must be compensated in respect of any loss suffered in consequence of the detention of the fishing vessel. Such compensation shall be payable by the **[add competent national authority]**.

### Annex

#### Certificate of insurance or other financial security in respect of third-party liability by fishing vessels

Issued in accordance with the provisions of the Compulsory Third Party Liability Insurance for Fishing Vessels Regulations 2020 [or add a reference to the legislation wherein compulsory insurance for fishing vessels will be required]

Name of Vessel	
Gross Tonnage or length overall	
Distinctive number or letters / vessel marking / identification	
Vessel registry number or IMO ship identification number (for vessels over 12 meters in length);	
Port of Registry	
Name and full address of the principal place of business of the fishing vessel owner(s) and/or manager(s)	
AIS/VMS (if available);	
Length	
Beam	
Draft	
Type of vessel and year built	
Constructor/builder and location	
Type of engine (Kw) and year built	
Number of crew	
Date of last survey/stability test	

This is to certify that there is in force, in respect of the above-named fishing vessel, a policy of insurance or other financial security satisfying the requirements of [add a reference to the legislation wherein compulsory insurance for fishing vessels will be required]

Type of Security \_\_\_\_\_

Duration of Security \_\_\_\_\_

Name and address of the insurer(s) and/or guarantor(s)

Name \_\_\_\_\_

Address \_\_\_\_\_

This certificate is valid until \_\_\_\_\_

Issued or certified by \_\_\_\_\_

**[add competent national authority]**

OR

The following text should be used if **[add country]** avails itself of regulation 4, paragraph 4:

The present certificate is issued under the authority of the Government of **[add country]** by

\_\_\_\_\_  
(name of institution or organization)

At \_\_\_\_\_ On \_\_\_\_\_

(Place)

(Date)

\_\_\_\_\_  
(Signature and Title of issuing or certifying official)

### **Explanatory Notes:**

1. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
2. If security is furnished in several forms, these should be enumerated.
3. The entry "Duration of Security" must stipulate the date on which such security takes effect.
4. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

**APPENDIX B: SUMMARY REPORT OF THE STAKEHOLDER MEETING ON FISHERIES  
INSURANCE LEGISLATIVE FRAMEWORKS FOR THE CARIBBEAN,  
BARBADOS, 15 NOVEMBER 2019**

1. The Stakeholder Meeting on Fisheries Insurance Legislative Frameworks for the Caribbean was held at the United Nations House, Christchurch, Barbados on 15 November 2019. The meeting was attended by representatives of fisheries, finance and maritime authorities and the private sector from Barbados, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Trinidad and Tobago, as well as various FAO officers and consultants.

**Opening of the meeting**

2. At the start of the meeting the participants introduced themselves.
3. The meeting participants were welcomed by Ms Renata Clarke, Coordinator of the FAO Subregional Office for the Caribbean. Ms Clarke mentioned that there are approximately 116 000 small-scale fishers active in the CARICOM region, who possess together some 33 000 commercial fisheries vessels. The region's fisheries sector is characterized by small-scale fishers, with vessels generally smaller than 12 meters in length. She said that fishers are important for the local economies, employment and food security. The fisheries sector is a major provider of livelihoods, culture, social cohesion and export earnings for most of the Caribbean islands. However, as fisheries is also a dangerous occupation, with many accidents and fatalities, it is important that fishing vessels, owners and crew insured. A sustainable fisheries sector should not only be sustainable in environmental terms, but also in social and economic terms. Insurance, particularly third party liability insurance, can play an essential role in developing a true sustainable sector.
4. Following the welcome words, Mr Raymon van Anrooy, FAO Senior Fishery Officer, presented the objectives of the meeting, being the following:
  - Present and discuss the outcomes of a review of national legislative frameworks in terms of entry points for introducing fishing vessel- and (mandatory) third party liability insurance in fisheries.
  - Present and discuss examples of best – practice regulations available world-wide for fisheries insurance, with an emphasis on third-party liability insurance.
  - Discuss a draft regulation that can support introduction and application of third-party liability insurance in small-scale fisheries.
  - Discuss capacity building and legislative assistance needs of Caribbean countries for introducing new insurance programmes for the fisheries sector that are in line with those already in place in other sectors.
5. The meeting agenda was adopted as presented and is provided in Annex A. The list of participants is made available in Annex B.
6. Mr van Anrooy provided an introduction to fisheries insurance, explaining why it is essential for a sustainable fishing sector and the livelihoods in coastal communities in the Caribbean. He also listed the main reasons for why most fishers are not being insured at present. Reference was made to the 2015-2016 FAO/World Bank Assessment of insurance needs and opportunities in the Caribbean fisheries sector, which showed that only 3 percent of the Caribbean fishing vessels have insurance cover. He also referred to the development and status of the Caribbean Oceans and Aquaculture Sustainability facility (COAST), which is a parametric weather index insurance product currently being tested in Grenada and Saint Lucia.

7. Mr van Anrooy described that fishers not only need insurance cover for damage and losses from storms and hurricanes, but that there is an expressed demand also for third party liability, coverage of damage to and loss of infrastructure, fishing craft and gear in case of accidents at sea and in ports, coverage of medical expenses for captain and crew in case of accidents, and for cases of theft. He added that both fisheries authorities and fisherfolk organizations have recommended introducing third party liability insurance for commercial vessels, similarly as vehicle insurance, which is mandatory throughout the Caribbean. Third party liability insurance will promote safety, provides cover for crew of fishing vessels, reduces significantly the vulnerability of fishers and their families to shocks caused by accidents in fishing, and contributes to sustainable fisheries livelihoods. If integrated within fishing license and/or fishing vessel registration processes, and/or made mandatory, third party liability insurance will likely have greater impact and be much cheaper for all involved.
8. The meeting participants emphasized that fishers and the authorities see the benefits of third party liability insurance in fisheries. It was noted that some people are reluctant to insurance because of the costs of comprehensive vessel insurance, but that third-party liability insurance does not need to cost a lot. The meeting discussed what information is required by insurers for third-party insurance, whether wooden vessels can be covered, vessel construction standards exist in the region, the need for updated vessel registries at maritime and fisheries authorities, and possible steps to take into account for establishing a mandatory third party liability insurance requirement in fisheries. It was mentioned also that few fishers currently have marine hull insurance for their vessel because of the relatively high premiums (around 3.5 to 4 percent of asset value) and that the Barbados Union of Fisherfolk Organizations (BARNUFO) has been promoting the introduction of accident insurance in fisheries for some years now, without much progress being made.
9. Dr Norman Martinez, FAO consultant presented global best-practices in fisheries insurance related legislation. Through the use of examples he explained why we need marine insurance, highlighting its importance in the maritime industry in general and the fishing industry in particular. He explained the different types of marine insurance and the cover usually provided in third party liability insurance. This helped recognize that compulsory third party liability insurance is for the benefit of everyone involved in the fisheries industry (claimants, shipowners, and society in general). The presentation explained the origins of compulsory third party liability insurance, and its introduction in international instruments (e.g. the Bunkers Convention, the Wreck Removal Convention, and the EU Directive 2009/20/EC). It was then explained how these could apply to the fishing industry and the benefit of being insured in the face of high-valued claims was illustrated through the use of case law. Dr Martinez then presented an analysis of different countries that have introduced compulsory third party liability insurance for fishing vessels, namely Spain, Malta, Japan, Albania, the United Kingdom. The discussion covered areas such as which fishing vessels are covered (in terms of size), what is the limit of compulsory insurance, which type of insurance is accepted, which type of claims are covered, is there a possibility of obtaining State aid for insurance purposes.
10. Following the presentation, the meeting discussed the liability levels, which could be significantly lower for small-scale fisheries than for large merchant vessels, as damages that can be caused to the environment and infrastructure are often lower. The option of a mutual insurance scheme was also shortly discussed. The unit of account<sup>12</sup> applied in many laws and regulations related to third party liability insurance in merchant marine sector was explained.
11. Dr Norman Martinez presented the Assessment of legal frameworks in the Caribbean in relation to the possible introduction of a compulsory insurance (third-party liability) requirement for fishing vessels. He provided an overview of entry-points for introducing such insurance in the legislation of Barbados, Dominica, Saint Kitts and Nevis, Saint Vincent and

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<sup>12</sup> The unit of account makes use of the special drawing rights (SDRs) of the IMF. For more information, please see ([https://www.imf.org/external/np/fin/data/rms\\_sdrv.aspx](https://www.imf.org/external/np/fin/data/rms_sdrv.aspx))

the Grenadines and Trinidad and Tobago. For this purpose, he presented an analysis of the legal framework of each of the abovementioned countries, which covered, legislation governing the maritime zones wherein the State enjoys sovereignty, sovereign rights, or jurisdiction in relation to fishing related matters; legislation on coastal zone management; legislation on shipping related matters – including inter alia ship registration and limitation of liability; legislation on fisheries matters and legislation on insurance related matters. The purpose of this discussion was to analyze different pieces of legislation in the abovementioned areas to determine whether third party liability insurance was already available in relation to fishing vessels. If not, the discussion aimed to identify possible entry points for this requirement. A discussion on the institutional framework created by the legislation in question was also made to assist in the determination of the most appropriate agency which should take the lead in the incorporation of the insurance requirement under national law. Since cost was one of the main concerns raised in relation to the introduction of the compulsory insurance requirement, a discussion was held on the limits of compulsory insurance by reference to the international conventions and national legislation on limitation of liability for maritime claims. The realization that the States represented in the meeting had not implemented effectively the provisions of the Convention or had not exercised the rights allowed by the Convention for the protection of small vessels (and fishing vessels in particular), raised an important concern.

12. The discussion on the legislation in place and entry points for introducing third party liability insurance in the 5 countries was diverse. With respect to the Barbados' legislation some practical examples were discussed (e.g. loss of life due to collision, loss of gears due to accidents) and the difference between towage and salvage was discussed. There seems to be interest by all stakeholders, maritime and fisheries authorities, fisherfolk organizations and the insurance sector to support introduction of third-party liability insurance. The need to have a record of accidents and fatalities in fisheries was mentioned, to learn from accidents, reduce certain risks and build capacity for prevention of accidents in fisheries.
13. The Shipping Act of Saint Vincent and the Grenadines has been largely based on international law, and therefore contains many entry-points for introducing third party liability insurance in fisheries. The current fisheries legislation update may provide an opportunity to also include third-party liability insurance as requirement for obtaining a fishing license. Some discussion took place on the many definitions that exist on "fishing vessel" depending on the purpose. It was noted that FAO uses different definitions of fishing vessels under the Port States measures agreement (PSMA), Coordinating Working party on Statistics, and that these are different again from those applied by IMO.
14. The Government in Trinidad and Tobago is amending or updating various laws, including those on fisheries and shipping. It appears that the current laws have some discrepancies with the LLMC Convention and the 2019 amendments should address this. Some discussion took place on the terminology applied, such as on the words "trade" and the interpretation of the law.
15. Dr Norman Martinez presented draft Compulsory third party liability insurance for fishing vessels (best practice) regulations. Given the time constraints, he only mentioned briefly the contents of the Explanatory Memorandum to Support the Introduction of the Requirement of Compulsory Insurance in Relation to Fishing Vessels, which was distributed to the participants. He then proceeded to explain in detail the draft Regulations. The first point made was that the provisions were drafted in the form of model Regulations which could be enacted under the relevant Act (the discussions seem to point to the Fisheries Act as the most appropriate legislation). It was explained however that the substantive provisions could be taken and incorporated in the Act itself (if this was in the process of being revised – as in the case of Trinidad and Tobago). He then explained that the proposed Regulations will apply to all of the territory, including the territorial sea, and to the exclusive economic zone (or equivalent zone) of the relevant country. It was explained that the draft regulations will require the owner of a fishing vessel to maintain insurance or other financial security (such as a



guarantee of a bank or similar institution), to cover liability for third party claims. The amount of insurance required by each country would be determined by the relevant authority to match the limits of liability under the applicable national regime (but in all cases not exceeding an amount calculated in accordance with article 6 of the LLMC Convention, 1976, as amended). In this respect it was highlighted that while some of the States represented are parties to the LLMC Convention 1976, none are parties to the 1996 Protocol thereto. It was also highlighted that there are instances of inadequate implementation of the Convention, or when the limits of liability have been properly followed, some of the States have failed to exercise the rights granted by the Convention to protect small vessels. He explained the nature, form and contents of the certificate of insurance to be issued, as well as the requirement to carry it on board the vessel and to show it to authorized officers if and when required. He also explained the introduction of the right of direct action whereby any claim in respect of third-party liability covered by the insurance required by the Regulations may be brought directly against the insurer or other person providing financial security for the fishing vessel owner's liability. Emphasis was placed on the fact that there is a need to establish adequate penalties for breach of the Regulations and that in case of violations there will be a power to detain the vessel, but that at the same time the vessel owner's rights will be protected by the inclusion of a provision entitling him to compensation in case of an unjustified detention. The draft Regulations are provided in Appendix A.

16. In the discussion that followed the presentation the participants acknowledged the usefulness of the draft regulations. Some discussion took place on the terminology used, particularly on "summary conviction", the role of a certification society if there are not enough inspectors available in a country, and on the application of fines and their levels. It was also explained that to determine costs, the relevant States must provide information about the fishing fleet including, *inter alia*, number of vessels, size, type, construction material, engines, and number of crew, as this details are essential for insurers to determine whether they are willing to take on the risks and the premium payable for the insurance provided.
17. The participants expressed a need for more information on best-practice regulations that have shown to work for small-scale fisheries. It was mentioned by participants from Trinidad and Tobago, Barbados and Saint Vincent and the Grenadines that their ongoing legislative amendment processes could incorporate the requirement for third-party liability insurance related to issuance of fishing licenses or for vessel registration. In this regard the Stakeholder Meeting was held at the right moment, allowing the inclusion of insurance matters in policy and legislative discussions.
18. The Barbados Union of Fisherfolk Organizations (BARNUFO) emphasized that there have been various attempts in the past to include third party insurance for fisheries, of which BARNUFO was supportive. It was hoped that this time the Ministry would listen to the fishers and move ahead with its introduction.
19. Ms Iris Monnereau, project manager of the Climate change adaptation for the Eastern Caribbean fisheries sector (CC4Fish) project mentioned that the project would be able to support specific requests from project partner countries on the subject of building capacity for introducing fisheries insurance.

#### **Closure of the meeting**

20. Mr Van Anrooy thanked the participants in the Stakeholder Meeting and the FAO staff and consultant involved in its organization for the productive meeting and for the continued collaboration towards increasing access of small-scale fishers to insurance services in the Caribbean.

## Annex A

### Agenda

08:30	Pick-up by bus at the hotel and transport to the UN House
08:45 – 09:00	Registration of participants
Morning Session 09:00 – 09:10	1. Opening of the meeting Introduction of participants Welcome words by Renata Clarke, FAO Subregional Coordinator for the Caribbean
09:10 – 09:20	2. Objectives of the meeting and adoption of the agenda (Raymon van Anrooy, FAO)
09:20 – 09:45	3. Overview of recent studies and fisheries insurance efforts in the Caribbean (Raymon van Anrooy, FAO)
09:45 – 10:15	Coffee break
10:15 – 11:15	4. Global best-practices in fisheries insurance related legislation (Norman Martinez, FAO expert)
11:15 – 13:00	5. Outcomes of an assessment of entry points for mandatory fisheries insurance legislation in various Caribbean countries (Norman Martinez, FAO expert)
13:00 – 14:00	Lunch break at the UN House
Afternoon Session 14:00 – 14:30	6. Moderated discussion on the pros and cons of mandatory fisheries insurance (e.g. third party liability, P&I, Marine, Hull, life/accident insurance)
14:30 – 15:15	7. Presentation and discussion of a draft model regulation/legal provision for introducing third party fisheries insurance in legal frameworks in the Caribbean (Norman Martinez, FAO expert)
15:15 – 15:30	Refreshments
15:30 – 16:00	8. Presentation and discussion of a draft capacity building plan for introduction of mandatory third party liability fisheries insurance and roadmap for implementation of the plan (Raymon van Anrooy, FAO)
16:00	9. Closure of the meeting
16:15	Return by bus to the hotel for participants that depart in the evening and/or the next day

## Annex B

### List of participants

#### Dominica

Joseph, Wynnona  
Fisheries Officer  
Ministry of Environment, Natural Resources,  
Physical Planning and Fisheries  
Roseau Fisheries Complex Bldg.  
Dame M. E. Charles Blvd  
Bay Front, Roseau - 00109-8000  
Tel: (767) 266-5291/2  
E-mail: [wynnonaj@gmail.com](mailto:wynnonaj@gmail.com)

Laurent, Luana  
Examiner  
Insurance Sector  
Financial Services Unit  
Ministry of Finance  
Financial Centre  
5th Floor Kennedy Avenue  
Roseau  
Dominica  
Tel: (767) 266-3559  
Email: [laurentl@dominica.gov.dm](mailto:laurentl@dominica.gov.dm)

#### Saint Kitts and Nevis

Alleyne, Wilmot  
Fisheries Law Enforcement Officer  
Director of Marine Resources  
Department of Marine Resources  
C.A.Paul Southwell Industrial Park  
Basseterre  
Tel : (869) 465-8045  
E-mail : [wilmot\\_a@yahoo.com](mailto:wilmot_a@yahoo.com)  
[dmskn@gmail.com](mailto:dmskn@gmail.com)

James, Annella  
Legal Advisor  
Ministry of Finance  
Golden Rock  
Basseterre  
St. Kitts  
Tel: (869) 467-1093  
Email: [Annella.james@gov.kn](mailto:Annella.james@gov.kn)

#### Barbados

King, Najla  
Maritime Legal Consultant  
Ministry of Maritime Affairs and Blue  
Economy  
Civil Aviation Building  
Charnocks  
Christ Church  
Tel (246) 248-9292  
Email: [info@carimarine.com](mailto:info@carimarine.com)

Fisheries Division  
Princess Alice Highway  
Bridgetown  
Tel: (246) 535-5800

Leslie, Joyce  
Deputy Chief Fisheries Officer  
Tel: (246) 535-5803  
Email: [joyce.leslie@barbados.gov.bb](mailto:joyce.leslie@barbados.gov.bb)

Jackman, Philip  
Principal Fisheries Assistant  
Email: [philip.jackman@barbados.gov.bb](mailto:philip.jackman@barbados.gov.bb)

Leslie, Dennis  
Senior Vessel Inspector  
Email: [dennis.leslie@barbados.gov.bb](mailto:dennis.leslie@barbados.gov.bb)

Moore, Therese  
Fisheries Officer  
Email: [therese.moore@barbados.gov.bb](mailto:therese.moore@barbados.gov.bb)

#### Fisheries Representatives

Cox, Wayne  
Boat Agent  
Fair View  
Christ Church  
Tel: (246) 548-2176  
Mob: (246) 234-1523  
Email: [waynecox72@gmail.com](mailto:waynecox72@gmail.com)

Nurse, Corey  
 Boat Owner  
 Silver Sands  
 Christ Church  
 Tel: (246) 428-7725  
 Tel: (246) 428-9020  
 Mob: (246) 243-1661  
 Email: [coreynurse21@gmail.com](mailto:coreynurse21@gmail.com)

Innis, Henderson  
 Treasurer  
 Barbados National Union of Fisherfolk  
 Organisation (BARNUFO)  
 Mob: (246) 230-1342  
 Email: [hcij@caribsurf.com](mailto:hcij@caribsurf.com)

Amory, Glenn  
 Senior Assistant Secretary  
 Ministry of public Infrastructure, Post  
 Urban Development and Transport  
 Needsmust  
 St. Kitts  
 Tel: (869) 467-1450|1451|1452  
 Mob (869) 868-5302  
 Mob (869) 462-2558  
 Email: [glenn\\_amory22@hotmail.com](mailto:glenn_amory22@hotmail.com)

**Saint Vincent and the Grenadines**  
 Robertson, Loriele  
 Administrative Cadet  
 Ministry of Finance  
 St. Vincent and the Grenadines  
 Tel (784) 485-6971  
 Email : [loriell Robertson@gov.vc](mailto:loriell Robertson@gov.vc)

Charles, Chevaney  
 Legal Officer  
 Department of Maritime Administration  
 Kingstown Office  
 Upper Floor  
 Cruise Ship berth  
 Kingstown  
 St. Vincent and the Grenadines  
 Tel: (784) 456-1378  
 Mob (784) 528-5580  
 Email: [svgmard@gmail.com](mailto:svgmard@gmail.com)

**Trinidad and Tobago**  
 Mieus, Recardo / National Focal Point  
 Fisheries Officer  
 Ministry of Agriculture, Land and Fisheries  
 P.O. Box 389  
 St. Clair Circle, St. Clair  
 Port of Spain  
 Tel:(868) 623-6028  
 Tel:(868) 623-8525  
 E-mail: [rmieus@gov.tt](mailto:rmieus@gov.tt)

Basant, Richmond  
 Marine Administrator  
 (Pollution and Prevention)  
 Maritime Services Division  
 (869) 756-6331  
 Email: [richmondbasant@gmail.com](mailto:richmondbasant@gmail.com)

**Insurance Agents**  
 Insurance Cooperation of Barbados (ICBL)  
 Hall, Stacey  
 Underwriter / Quality Assurance  
 Tel: (246) 434-6053  
 Mobile: (246) 249-5946  
 Email: [shall@icb.com.bb](mailto:shall@icb.com.bb)

**Food and Agriculture Organization of the United Nations (FAO)**  
 FAO headquarters  
 Vialledelle Terme di Caracalla  
 00153 Rome, Italy

VanAnrooy, Raymon  
 Senior Fishery Officer  
 Tel: (39) 06570 50155  
 E-mail: [Raymon.VanAnrooy@fao.org](mailto:Raymon.VanAnrooy@fao.org)

Martinez Gutierrez, Norman  
 FAO Consultant  
 Email: [norman.martinezgutierrez@fao.org](mailto:norman.martinezgutierrez@fao.org)

**FAO Subregional Office for the Caribbean  
(FAO/SLC)/**

**WECAFC SECRETARIAT**

2nd Floor, United Nations House  
Marine Gardens, Hastings  
Christ Church, BB11 000  
Barbados

Monnereau, Iris  
Regional Project Coordinator  
Tel: (246) 426-7110/11; Ext. 225  
E-mail: [Iris.Monnereau@fao.org](mailto:Iris.Monnereau@fao.org)

Diei Ouadi Yvette  
Fishery and Aquaculture Officer  
Secretary of the Western Central Atlantic  
Fisheries Commission (WECAFC)  
Tel: (246) 426-7110/11; Ext. 249  
E-mail: [Yvette.dieiouadi@fao.org](mailto:Yvette.dieiouadi@fao.org)

Moe, Celestine  
Administrative/Operational Support  
Tel: (246) 426-7110/11; Ext. 262  
Email: [Celestine.Moe@fao.org](mailto:Celestine.Moe@fao.org)

Juman, Leisel  
Intern  
Email: [leisel.juman@fao.org](mailto:leisel.juman@fao.org)

## Annex C

### **Draft capacity building plan for introduction of third party liability fisheries insurance**

**Impact statement:** Insurance services are available and accessible for small-scale fisheries in the Caribbean region, supported by increased capacity of service providers and fisherfolk organizations, enabling policy and legal frameworks and partnerships.

The plan has the following **goals**:

1. Contribute to the implementation of the Code of Conduct for Responsible Fisheries and the relevant provisions of the FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries
2. Contribute to the achievement of the United Nations Sustained Development Goals (SDGs) and particularly Goals 8, 12, 13 and 14.

#### **Objectives:**

1. Build capacity among insurance providers, fisherfolk organizations, NGOs, and concerned government agencies, to design and implement Third party liability insurance products that suit the needs of small-scale fishing communities and enhance social protection.
2. Guide policy and decision makers in the insurance industry, including private sector, NGOs and governments, to help introduce and incentivize insurance services for small-scale fishers, with the objective to introduce Third party liability coverage for fishing vessels.
3. Develop a capacity building (training) module for fisherfolk organizations and insurance services providers on third party liability insurance, for region-wide dissemination and application.

#### **Expected outcomes:**

- A. Improved knowledge, skills and advocacy of leaders/senior staff of fisherfolk organizations and insurance service providers
- B. Increased institutional and organizational capacity for the provision of third party liability insurance services for fishing vessels.
- C. Enabling policy and legal frameworks for introducing Third party liability insurance service provision for fishing vessels
- D. Capacity building and training modules that can be used for further education at the national and regional level.

#### **Activities foreseen:**

- Organization of capacity building/awareness raising workshops for senior staff of insurance service providers and fisherfolk organization leaders
- Reviews of legislation, strategies and policies – drafting of proposals for amendments of regulations
- Capacity building materials development and dissemination, e.g. on
- The benefits and costs of Third Party Liability Insurance for fishing vessels
- Incorporation of Third Party Liability insurance in requirements for fishing licenses or vessel registration
- Marketing and promotion of insurance services among SSF, in collaboration with fisherfolk organizations and insurers

**Stakeholders to be involved:** Marine insurance providers and brokers, Fisherfolk organizations in Caribbean countries (+ CNFO), Fisheries authorities (fisheries divisions), Maritime authorities

(shipping, ports, as well as coastal zone), Finance authorities (insurance departments), National level training and education institutes, Development banks (CBD, IADB, WB) and other resource partner, and IGOs (FAO, CRFM, IMO, ILO).

**Next steps by FAO - follow-up actions from the Stakeholder Meeting:**

Actions	Timing
Finalize the draft study, following your inputs at and directly after this stakeholder meeting	Nov- Dec 2019
Obtain clearance from FAOs Development Law service	Jan 2020
Formally submit the Report with study outcomes to the governments concerned and to other stakeholders in the Caribbean	Feb 2020
On request – Provide technical/legal assistance to national authorities to build upon existing and introduce new insurance programmes for the fisheries sector that are in line with those already in place in other sectors (e.g. transport, maritime).	2020
On request - Support increasing awareness and building capacity activities in those countries that decide to move ahead with introduction of third-party liability insurance for small-scale fisheries	2020

The draft capacity building plan for introduction of third party liability fisheries insurance requires stakeholder guidance in order to finalize it and seek support for it in the short-term. Inputs are required on the following items: outputs and activities; stakeholders; who should coordinate/lead the next steps at national/regional level; any FAO support/advice required, and if so, for what specifically; resources needed for finalizing and implementation of the capacity building plan; and any roadmap suggestions for next steps.

## **Appendix C: Information in support of awareness raising on third party liability insurance**

### **COMPULSORY (THIRD-PARTY LIABILITY) INSURANCE FOR FISHING VESSELS IN THE CARIBBEAN: WHAT YOU NEED TO KNOW**

#### **1 INTRODUCTION**

Fishing is a very dangerous activity. In fact, fisheries is the #1 in most lists of deadly occupations, based on existing global fatality rates. While accident and fatality rates in many industries and sectors are reducing, this does not appear to be the case in fisheries ( $\pm$  80 - 90 fatalities among Caribbean fishers annually from accidents in fisheries).

There are around 33 000 commercial capture fisheries vessels in CARICOM countries, out of which less than 1 000 vessels are currently insured. Therefore, the burden associated with accidents and fatalities in the fishing industry in the Caribbean is largely placed on the 116 000 small-scale fishers in the CARICOM countries, their families and coastal communities.

During the course of the fishing activities, as a fishing vessel owner, you will be exposed to many risks. Your fishing vessel may get damaged, or you may even lose your fishing vessel.

You may also incur liabilities to third parties. This includes damage to other vessels due to a collision with your vessel, damage to fishing nets caused by your vessel, or loss of life or personal injury caused by the operation of your vessel.

Marine insurance helps you protect yourself against these risks. This is why marine insurance is of great importance to the fishing industry. There are different types of insurance available.

To protect your fishing vessel and its equipment in case of loss or damage you may wish to obtain a hull and machinery insurance. However, this type of insurance does not protect you from third-party claims in relation to damage caused to them by your vessel. This is why the Government has recently decided to introduce a compulsory (third-party liability) insurance requirement for fishing vessels.

You should note that the introduction of the compulsory (third-party liability) insurance protects:

- (a) **Claimants (whether members of the crew or third parties):** who may obtain compensation for claims against you (even in cases where the claims exceed the value of your own assets).
- (b) **You (as the vessel owner):** who may satisfy claims brought against you by third parties without facing the risk of bankruptcy following a tragic event, as you will have insurance cover for this purpose.
- (c) **Society in general:** as the introduction of compulsory insurance can also contribute to higher standards on board (risks reduction measures on a fishing vessel may reduce the insurance premiums).

Compulsory insurance is not new in maritime affairs. In fact, it is one of the most important elements of the conventions adopted by the International Maritime Organization (IMO). Accordingly, you may find a compulsory insurance requirement in international maritime conventions that cover pollution damage from tankers, losses caused by hazardous and noxious substances, losses suffered in the carriage of passengers and their luggage by sea, bunker oil pollution damage, and wreck removal



expenses. The conventions dealing with the last two areas mentioned may cover fishing vessels depending on their size.

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 requires any ship (including fishing vessels) of over 1 000 tonnes to maintain insurance to cover liability under the Convention; whereas the Nairobi International Convention on the Removal of Wrecks 2007 requires any ship (including fishing vessels) of over 300 tonnes to maintain insurance to cover liability under the Convention.

The European Union considered this to be so important that it extended its application to all vessels (including fishing vessels) of over 300 tonnes through Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the Insurance of Shipowners for Maritime Claims (Directive 2009/20/EC).

While compulsory (third-party liability) insurance specifically designed for fishing vessels is not widespread, several countries include it in their general legislation for small vessels or have dedicated legislation for this purpose. The introduction of a compulsory insurance requirement is seen as beneficial to fisherfolk and injured parties.

Maritime claims for loss or damage caused to third parties may be very expensive, and lack of insurance may lead to hardship in case you are faced with a huge claim. If the fishing vessel owner has insurance, his insurance will cover this claim from the third party. If not, he would have to cover not only the cost of the damage caused, but also the cost of defending the claim in court. The amount of premium paid for the insurance cover, may be much cheaper than the high costs of defending a claim for damages in court.

## **2 WHAT RISKS DOES THIRD-PARTY LIABILITY USUALLY COVER?**

Third-party liability insurance cover may vary depending on the insurance provider. The risks that are usually covered by third-party liability insurance policies include:

- personal injury and death claims (incl. repatriation and maintenance);
- liability toward passengers and their luggage;
- cargo loss and damage;
- collisions and wreck removal (required by law);
- pollution caused by the vessel and its' operations;
- loss of property on the insured vessel;
- damage to fixed and floating objects; and
- towage.

A few of the risks usually covered by the third-party liability insurance are briefly discussed below.

### **(a) Collision, fishing nets and property of others**

Third-party liability insurance will usually cover claims that arise from a collision (whether with other vessels, piers, wharves, jetties, pontoons) or any other third-party property (including damage to their fishing nets). Claims for loss of life or personal injury resulting from a collision are also covered.

### **(b) Piracy**

Third-party liability insurance will usually cover claims arising from acts of piracy against your vessel, but this cover does not extend to kidnap and ransom demands or payments.

### **(c) Crew, passengers and others**

Third-party liability insurance will usually cover claims from your crew and others for loss of life, illness or personal injury (including medical costs and other expenses). This cover extends to claims made against your crew that result from doing their work. This cover will also include reasonable death and/or disability payments that you provide under crew contracts. Third-party liability insurance will also usually cover the extra costs and expenses of fuel, insurance, wages, etc. that are incurred in diverting and awaiting crew replacement whilst your vessel brings sick or injured crew or others ashore for urgent medical treatment, or to arrange the repatriation of dead bodies from your vessel.

### **(d) Pollution and environmental liabilities**

Third-party liability insurance will usually cover claims for pollution from your vessel, including the cost of clean up and reasonable measures taken to prevent an imminent risk of pollution. Damage to coral reefs and other sensitive marine environments may also be covered.

### **(e) Towage and Wreck Removal**

Third-party liability insurance will usually cover claims for damage to a towed fishing vessel and claims for wreck removal, marking or lighting costs compulsory by law, following the loss of your vessel (including claims for the extra cost and expenses of removing catch, cargo or property from the wreck). This cover may also extend to voluntary wreck removal when no wreck removal order has been given.

### **(f) Others**

Third-party liability insurance will usually cover other types of claims such as the loss of or damage to personal effects, fines, mitigation costs, contractual liabilities and indemnities, inquiries and criminal proceedings, quarantine costs, stowaways refugees and life salvage, war risks, as well as any other special cover you may require. It is however, very important to read the policy to understand which claims are excluded from the insurance cover provided.

## **3 THE COMPULSORY THIRD-PARTY LIABILITY INSURANCE FOR FISHING VESSELS REGULATIONS 2020**

In light of the reasons mentioned above and to protect all the stakeholders in the fishing industry, the Government introduces a requirement of compulsory (third-party liability) insurance in relation to fishing vessels through the “Compulsory Third-Party Liability Insurance for Fishing Vessels Regulations 2020”.

The purpose of these Regulations is to ensure that owners of all fishing vessels have in place third-party liability insurance to cover the vast majority of third-party claims. Many of these types of claims are described as subject to limitation of liability under national law. The introduction of compulsory insurance for fishing vessels, is thus intended to safeguard against situations where a fishing vessel owner is liable for third-party claims, but does not have enough funds to provide compensation.

The Regulations apply to all local fishing vessels, wherever they may be, and to all foreign fishing vessels navigating or carrying out fishing operations in the territory, including the territorial sea, and to the exclusive economic zone.

## **4 HOW DO THE REGULATIONS AFFECT YOU?**

The Regulations provide for compulsory insurance (as is now the shipping industry standard) which covers liability for the vast majority of third-party maritime claims. In the context of the Regulations, “insurance” means indemnity insurance (usually of the type provided by Protection and Indemnity (IGP&I) Clubs, or in the case of small fishing vessels, by local insurance companies).

- (1) As owner of a fishing vessel you must maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability for third-party claims.
- (2) The amount of insurance required will be determined by the competent national authority from time to time.
- (3) After you obtain the required insurance, the competent national authority will issue a certificate of insurance in accordance with the Regulations
- (4) This compulsory insurance certificate will be in the form of the model set out in Schedule 1 to the Regulations, and will contain the following particulars:
  - (a) Name of the fishing vessel, distinctive number or letters / vessel marking / identification, and port of registry;
  - (b) Gross tonnage of the fishing vessel or length overall (LOA);
  - (c) Name and full address of the principal place of business of the fishing vessel owner(s) and/or manager(s);
  - (d) Vessel registry number or IMO ship identification number (for vessels over 12 meters in length);
  - (e) AIS/VMS (if available);
  - (f) Other vessel details including length, beam, draft, type of vessel and year built, constructor/builder and location, type of engine (Kw) and year built, and number of crew;
  - (g) Date of last survey/stability test;
  - (h) Type and duration of security;
  - (i) Name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
  - (j) Period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.
- (5) The certificate will be in English. However, for vessels that are allowed to fish or operate outside national waters, the text will include a translation into French or Spanish.
- (6) It is very important to ensure that the certificate is always carried on board the fishing vessel and you must deposit a copy with authorities who keep the record of the fishing vessel's registry (in case of foreign vessels, a copy of the certificate should be deposited with the authority who issues or is keeps a register of its fishing licence).
- (7) You must instruct the master of your vessel to produce the certificate when this is so requested by an authorized officer.
- (8) The competent national authority is empowered to determine the procedures, fees, and conditions for the issue and validity of the certificate. You must therefore remain vigilant so that you are not taken by surprise.
- (9) The Regulations clearly state that no local fishing vessel may operate at any time unless it carries the relevant compulsory insurance certificate.
- (10) Foreign fishing vessels may not undertake any fishing or related activities in the territory, including the territorial sea and the exclusive economic zone unless they carry the relevant compulsory insurance certificate. The certificate is also required to enter or leave a port, or to arrive at or leave from an offshore facility in the territorial sea.
- (11) For your peace of mind, please note that any claim in respect of third-party liability covered by the insurance required by the Regulations may be brought directly against the insurer or other person providing financial security.

- (12) Strict compliance with the Regulations is required, as failure to do so would constitute an offence and would subject you to the penalties established by the Regulations. Additionally, if there is an offence, your vessel may be detained by an authorized officer.
- (13) In the eventuality that your vessel is detained, the authorized officer detaining the fishing vessel must serve on the master of the fishing vessel a detention notice which—
  - (a) states the reason for the detention; and
  - (b) requires the fishing vessel to comply with the terms of the detention notice until it is released by a competent authority.
- (14) Where the detained fishing vessel is foreign, the competent national authority must immediately inform, in writing—
  - (a) the fishing vessel's flag State administration; or, if this is not possible,
  - (b) the Consul of the State of the flag administration; or, in the Consul's absence,
  - (c) the nearest diplomatic representative of the State of the flag administration.
- (15) To prevent arbitrary actions, and to protect your interests, the Regulations provide that if there were no reasonable grounds for your vessel to be detained, you must be compensated in respect of any loss suffered in consequence of the detention of your fishing vessel.

## 5 CONCLUSIONS

Fishing is a very dangerous activity. Not only are there many damages caused to property, but every year there are too many accidents and fatalities happening in the Caribbean fisheries sector. Often the damage caused by collision between fishing vessels with other vessels and infrastructures is not compensated. This is where third-party liability insurance in fisheries will play a central role.

Third-party liability insurance will protect you as a fishing vessel owner, and will also protect your crew and any third party affected by your business, allowing them to obtain prompt and effective compensation for claims they may have against you. Overall, third-party liability insurance will protect society in general, as it can lead to higher standards on board fishing vessels. Therefore, for the benefit of all stakeholders in the fishing industry the Government asks you to support this initiative and obtain the required third-party liability insurance.

***Third-party liability insurance will provide you peace of mind. Leaving the risks to the insurers, you can focus on what really matters: fishing!***

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**This circular summarizes the findings of an FAO assessment of legal frameworks in five Caribbean countries (Barbados, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Trinidad and Tobago) in terms of entry points for introducing fishing vessel insurance. It also contains an overview of international conventions governing marine insurance and examples of mandatory fishing vessel insurance legislation from selected countries. The origins of compulsory third party liability insurance in the maritime industry and its introduction in international instruments (e.g. the Bunkers Convention, the Wreck Removal Convention, and the EU Directive 2009/20/EC) are discussed. The benefits of introducing compulsory third party liability insurance for everyone involved in the fisheries industry (claimants, shipowners, and society in general) in line with those in the merchant shipping industry are presented. Model regulations to facilitate introduction of compulsory third party liability insurance for fishing vessels are provided, as well as information to support fishers' awareness raising and capacity building on this subject. This circular also contains the proceedings of a Stakeholder Meeting on Fisheries Insurance Legislative Frameworks for the Caribbean, held on 15 November 2019 in Barbados, where the assessment findings, best-practices and model regulations were presented.**

**The circular makes a case for introduction of compulsory third party liability insurance for fishing vessels in the Caribbean, and claims that such insurance contributes to improving the working conditions of fishers, their safety and to responsible fishing practices.**

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