

The Mariner's Rights in Salvage

Part I: A Primer for the Non-Professional Salvor

By Darren Williams

This article is intended to outline of the rights and responsibilities of mariners who undertake "pure" salvage, that is, salvage work done without a salvage contract. We will address the most common case of pure salvage, which is where a non-professional salvor (often a towboat crew or fisherman) happens upon property that appears to be in distress, lost or abandoned at-sea. Such property might be, for example, an abandoned skiff found adrift, a crate of goods washed ashore, or an anchor winch found sunk to the bottom. The issue of salvage rewards for protecting the environment will be addressed in future issues.

The Basis for a Claim in Salvage

The law of pure salvage is based on Federal legislation (Part VI of the *Canada Shipping Act*), international convention (the *International Convention on Salvage, 1989*) and common law (the law as decided by court decisions). Section 452 of the *Shipping Act* provides a clear basis for a salvage claim in Canada:

452. When, within Canadian waters or on or near the coasts thereof, any vessel is wrecked, abandoned, stranded or in distress, and services are rendered by any person in assisting the vessel or in saving any wreck, there shall be payable to the salvor by the owner of the vessel or wreck, as the case may be, a reasonable amount of salvage including expenses properly incurred.

As well, the *International Convention on Salvage, 1989*, incorporated into the *Shipping Act*, states that a reward for salvage is to be fixed with a view to encouraging salvage operations and is to take into account factors which include: the salvaged value of the vessel; the skill and risk of the salvors; the measure of success obtained by the salvor; the risk of liability and other risks run by the salvors or their equipment; and the promptness of the services rendered.

What is subject to Salvage?

For mariners seeking to understand their rights and responsibilities as would-be salvors, the definition of a "wreck" in the *Canada Shipping Act* is a good place to start. The *Act* states that "wreck" includes: (a) jetsam, flotsam, lagan and derelict found in Canadian waters; (b) cargo, stores and tackle of any vessel; (c) the property of shipwrecked persons; and (d) any wrecked aircraft, any part or cargo of any wrecked aircraft and any property in the possession of persons on board any aircraft that is wrecked, stranded or in distress.

For clarity and interest sake, "jetsam" are goods cast overboard intentionally, "flotsam" are objects found floating at sea (presumed to be put there unintentionally), "lagan" are

goods thrown or sunk in the sea but attached to a buoy so that they may be recovered, and “derelict” is property left for good by the owner (permanently abandoned).

The practical effect of these definitions is that almost any item (aside from military, archeological or inherently dangerous objects such as PCBs) can be a “wreck” and subject to a salvage claim. However, mariners should be cautious about thinking something is a wreck when it is not. For example, a crab pot, although it fits the definition of a “wreck” because it is “lagan”, is obviously not open to a claim for salvage. A vessel that has been sitting on the beach for some time may appear to be abandoned by the owner, when it has not been. As discussed below, if there is any doubt, contact the owner first and then the Receiver of Wrecks before attempting any salvage work. Salvage done without the permission of the owner is trespass, and may result in charges for plundering or interfering with the Receiver of Wrecks.

Can I Keep What I Find?

It is a common misconception that placing a line on an abandoned vessel gives the finder ownership of the vessel. This is not true. It is also sometimes thought that the age-old doctrine of “Finders, Keepers” applies to property that mariners find in their travels. This is not true either. Taking possession of property that appears to be a wreck does not give the salvor right of ownership. Realistically, however, there are some items that mariners will find that are simply not valuable enough to attract attention if the item is kept by the salvor without anyone knowing. For more valuable or larger items, such as significant pieces of cargo or entire vessels, it is likely that the owner or other interested party will notice it missing, and expect a salvor to make a formal claim for their salvage rights. Indeed, a mariner who finds a wreck is under a positive obligation to report the wreck to the Receiver of Wrecks as soon as possible. It is an offence to find and then hide a wreck.

Who is the Receiver of Wrecks?

The Receiver of Wrecks is an officer of the Canadian Coast Guard under the Department of Fisheries & Oceans, appointed under the *Navigable Waters Protection Act*. British Columbia and the Yukon have one Receiver of Wrecks, based in Vancouver.

The *Canada Shipping Act* states that once the Receiver of Wrecks is “acquainted” with a wreck they must locate the owner of the wreck. Concurrently, the Receiver has the power to assume responsibility for the preservation of the wreck, and direct that other persons assist in the preservation of the wreck. Failing to comply with a demand by the Receiver to assist in the preservation of the wreck, without reasonable excuse, can result in a fine. It is noteworthy that the Receiver may arrest anyone who plunders a wreck or interferes with the preservation of the wreck.

When the Receiver of Wrecks is not present, any fisheries officer, justice of the peace, customs officer, sheriff, member of the armed forces, or lighthouse keeper (publicly employed) may act with powers of the Receiver for the preservation of the wreck. Therefore, these parties may, and often do, assume possession and control of the wreck for the purposes of preservation. It is common that when a person finds a wreck they will release the wreck to a peace officer. However, because peace officers are not prevented from making a salvage claim for the wreck despite being an agent of the Receiver and employee of the Crown, it is crucial that a salvor not release the wreck to the peace officer without first reserving (preferably in writing) their right as original salvor.

What do I do When I find a Wreck?

Remembering that a “wreck” is not just a vessel but almost any item that is in distress, lost or abandoned at sea, a mariner has two primary responsibilities when they find a wreck. These are: 1) Preserve the wreck, and 2) locate the owner or notify the Receiver of Wrecks.

Depending on the circumstances, the priority of carrying out these two responsibilities will vary. For example, where there is an imminent threat to the security of the property, the mariner’s first responsibility is to preserve the property, *and then* contact the owner or Receiver. Obviously, when finding an abandoned vessel in the process of sinking, do not wait to contact the owner or Receiver before preserving the vessel. On the other hand, where there is no imminent threat to the wreck, such as a vessel that has been sunk for some time, the salvor should first contact the owner and the Receiver of Wrecks before taking any steps in salvage. Failing to do this may result in a charge for trespass, plundering, or interfering with a Receiver of Wrecks.

Under the *Canada Shipping Act*, a person who finds a wreck and takes possession of it must, as soon as possible, deliver it to the Receiver of Wrecks. In most circumstances, “delivering” the wreck merely means making the Receiver of Wrecks aware of it. Failure to do so may result in a penalty of double the value of the wreck, plus forfeiting any salvage rights to the wreck.

Once notified, the Receiver will find the owner. The salvor may wish to assist the Receiver in doing so as it will speed up the process of the salvage claim. The salvor must then complete and file with the Receiver of Wrecks a “Notice to Salvors of Wreck” form. If the owner of the wreck is ascertainable, they must pay the salvor reasonable costs and expenses of salvaging the property. If the owner is not known or cannot be found, the wreck may be sold at auction and the proceeds used to pay the expenses of the salvor. If the salvor’s expenses outweigh the value of the wreck, the Receiver may give the salvor the wreck.

Salvage Tips

In later articles we will further discuss the law of salvage as it relates to the non-professional salvor. For the time being, I leave you with a few general tips to keep in mind as you ply the waters:

- Do not assume a beached wreck has been abandoned and is available for salvage simply because it has been there for some time. Where the wreck is not in immediate jeopardy, contact the owner or the Receiver of Wrecks before acting.
- You are not the owner of a wreck (such as a vessel found adrift) because you are the first to find it. Be cautious in the steps you take to salvage any wreck, as you may be trespassing, plundering, or interfering with the Receiver of Wrecks.
- Weigh carefully the priorities of preserving and reporting the wreck. Where the wreck appears to be in jeopardy, preservation of the wreck is the priority, in all other cases report the wreck before acting.
- Take no steps in salvage where the owner has explicitly prohibited you from doing so.
- Where you find yourself in possession of a wreck and a peace officer (including a fisheries officer) requests that you release the wreck to them, ensure you

- explicitly reserve your rights as a salvor before doing so. Do not, however, refuse to release the property to them.
- A claim for salvage must be made within two (2) years of the action that gave rise to the salvage claim. Do not let this period lapse.[BAT]

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PULL-QUOTES:

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