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Limitless salvage

Dennis L. Bryant

It seems like every month we see reports of long-lost maritime wrecks being discovered on the ocean bottom and treasures being salvaged from great depths. We also hear regularly of oil being recovered from sunken wrecks. There is now no practical limit to the ability to recover objects from the sea floor, regardless of depth, currents, weather, or other obstacles. The only existing obstacle seems to be financing - and costs are decreasing regularly.

Early salvors, such as Adolphus von Treileben in the 1664 salvage of cannons from the Swedish warship Vasa, used a diving bell to allow personnel to work at a moderate depth and still have access to breathable air. The diving helmet and dry suit were invented by Charles Deane, John Deane, and Augustus Siebe in the 1830s and used to recover cannons from the wreck of the HMS Royal George. Salvage vessels, equipment, tools, and techniques have progressed far in the intervening years. Regular salvage and treasure salvage have advanced apace.

The 1910 Salvage Convention codified the traditional law of salvage, focused almost exclusively on the right of salvage for remuneration. This convention has been largely supplanted by the 1989 Salvage Convention. One of the major developments in the new convention was inclusion of a provision for special compensation to be paid to salvors for work to prevent or lessen damage to the environment caused or threatened by the wreck or its cargo. While the intent of this provision was admirable, special compensation salvage awards under this provision have, in practice, proven to be minimal.

Wreck removal consists of the removal of hazardous wrecks, generally having little or no salvage value. Traditionally, the hazard involved a hazard to maritime navigation – in other words, a wreck where all or part of the sunken vessel had so little clearance above it that other ships might strike it. Government agencies, including the US Coast Guard and the US Army Corps of Engineers, require such hazardous wrecks in navigable waters to be removed by the owner and to be properly marked until such removal is completed.

The 2007 Wreck Removal Convention was primarily intended to provide uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the consequent costs. It applies within the “Convention area”,

defined as the exclusive economic zone (EEZ) of a State Party. Effectively, it makes wreck removal within twelve nautical miles of shore subject to coastal state law and wreck removal between twelve and 200 nautical miles of shore subject to the Convention provisions. Removal is defined as any form of prevention, mitigation, or elimination of the hazard created by a wreck. "Hazard" has been expanded to cover not only dangers or impediments to navigation, but also a condition or threat that may reasonably be expected to result in major harmful consequences to the marine environment or damage to the coastline or related interests of one or more States.

Subject to certain exceptions, the registered owner of the wreck is liable for the costs of locating, marking, and removing the wreck. The registered owner is also required to maintain insurance or other financial security for such costs, up to the amount calculated under the Convention on Limitation of Liability for Maritime Claims. This compulsory insurance provision is applicable to vessels of 300 gross tonnage and above flying the flag of a State Party and to similar vessels, wherever registered, entering or leaving a port of a State Party or arriving at or leaving from an offshore facility in the territorial sea of a State Party.

The Wreck Removal Convention entered into force on 14 April 2015. A total of 25 nations, representing 58.09% of the world's merchant fleet, have ratified the Convention and become State Parties. As a result, the majority of the vessels engaged in international commerce now carry wreck removal insurance.

The United States has not ratified the Wreck Removal Convention. Instead, it relies on statutes such as 33 U.S. Code section 409, which requires the owner or operator of a vessel that sinks in a navigable channel to immediately mark the wreck and to commence the immediate removal thereof. Federal law prohibits the discharge into the waters of the United States of oil or hazardous substances and makes the owner or operator of any vessel from which such discharge occurs responsible for its removal or remediation. In cases where the owner or operator does not immediately undertake removal and/or remediation action, the federal government may do so and, where possible, seek recovery from the responsible person. Vessels may not operate on waters of the United States unless they have met the financial responsibility requirements relating to potential pollution from oil or hazardous substances. The Oil Spill Liability Trust Fund or the Hazardous Substance Superfund (as applicable) is available to cover removal and remediation costs incurred by the federal government.

As salvage technologies have improved, wrecks that have been ignored for years are now being considered for salvage and environmental intervention. If the wreck or its cargo is valuable, commercial salvors, often in cooperation with affected national governments, are undertaking salvage in extremely deep waters. In 1941, the SS Gairsoppa sank off the coast of Ireland while carrying over 110 tons of silver. Much of that silver and other artifacts were recently recovered, despite the fact that the wreck lay about 15,000 feet beneath the surface, far deeper than the wreck of the Titanic. More recently, a similar amount of silver was recovered from the wreck of the SS City of Cairo, which sank in the South Atlantic in 1942 at an even greater depth.

On the environmental side, oil is being recovered from wrecks that have also been ignored for years due to the depths involved and the previous lack of technology able to effect the needed recovery. In 2001, it was determined that oil was being released from the wreck of the SS Jacob Luckenbach, a freighter that sank in 1953 in 175 feet of water in what is now the Gulf of the Farallones National Marine Sanctuary. The wreck was largely forgotten and ignored, even though its location was known, until intermittent oil slicks were traced back to the wreck. Monies from the OSLTF were used to pay for removal of over 100,000 gallons of heavy fuel oil from the wreck. In 2011, the OSLTF was again tapped to pay for a survey of the wreck of the tanker SS Montebello, which was sunk by a Japanese submarine off the coast of Cambria, California in 1942. The survey revealed that the hull is structurally sound and that there is little likelihood of an oil discharge in the foreseeable future. In Lake Erie, federal monies recently were used to fund removal of oil and hazardous substances from the leaking tank barge Argo that sank in 1937 during heavy weather.

The depth record for recovery of oil from a sunken wreck, though, is currently at 13,000 feet (greater than the depth of the wreck of the RMS Titanic). It was set in 2004, when remotely operated vehicles (ROVs) were used to remove oil from the wreck of the tanker Prestige, which had sunk in 2002 in heavy weather off the northwest coast of Spain. That oil recovery operation, occurring prior to adoption of the Wreck Removal Convention, was paid for by the Government of Spain. It is expected that similar operations in the future will be at least partially financed via the Convention mechanisms.

The US Coast Guard now routinely requires that oil be removed from sunken, grounded, and damaged vessels in US waters. This is primarily so as to minimize the risk of environmental damage. This practice also avoids later payment for oil removal by the OSLTF and furthers the principle of “the polluter pays”. The days of forgotten wrecks, even at great depths, are past.