

The State of South Carolina



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October 17, 1989

James A. Quinn
Deputy Chief Counsel
South Carolina Wildlife
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Post Office Box 167
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Dear Mr. Quinn:

You have advised that "[l]iterally thousands of watercraft are sunk or washed ashore in the coastal counties of South Carolina" as a result of Hurricane Hugo. Further, you have advised that "[i]ndividuals and perhaps companies are now engaged in salvage operations on these vessels." Field officers of your agency are having a difficult time distinguishing between salvage and looting, and you have asked for clarification to assist your agency.

Salvage

The term "salvage" is defined as the "service which is voluntarily rendered to a vessel needing assistance, and is designed to relieve her from some distress or danger either present or to be reasonably apprehended." B. V. Bureau Wijsmuller v. United States, 702 F.2d 333, 338 (2d Cir. 1983) (copy enclosed). The elements which must be present to give rise to a claim for salvage are:

- (1) present and impending marine peril;
- (2) voluntary services rendered (absence of a duty already existing to render assistance);
and
- (3) success in whole or in part, attributable to the salvor.

B. V. Bureau Wijsmuller v. United States, supra; 68 Am. Jur. 2d Salvage §5.

What would constitute an act of salvage would, of course, depend on the facts and circumstances of each particular case. Whether a salvage operation, as opposed to looting, is taking place will require determinations to be made on a case-by-case basis. For guidance in making such determination, the following from 68 Am. Jur. 2d Salvage §8 is noted:

The varied character of services upon which a claim to salvage may be based is pointed out in the definition of salvage hereinbefore given. Generally speaking, useful services of any kind rendered to a vessel or cargo where it is exposed to any impending danger and imminent peril of loss or damage entitles those who render such services to a salvage award. Accordingly, services rendered in extinguishing a fire on a vessel, or in aiding in extinguishing a fire, whether from the land or from another vessel, or from the burning vessel itself, are salvage services for which compensation may be claimed and awarded. Likewise, it is generally held that persons assisting in towing a ship from a dock where she is in imminent danger of catching fire are entitled to a salvage award, although there are decisions to the effect that the towing of a burning vessel away from another lying near is not a salvage service to the latter, at least in the absence of a request. The return to navigable waters of a vessel stranded on the shore is a service for which salvage may be awarded, provided the ship is unable to free herself and, even if not in imminent danger, would be imperiled in case of storm.

Services rendered will be rewarded as salvage services if they are of value, although the salvors are informed that their services are not needed. But if the services are forced where they are not needed and do not accomplish anything of value, no award will be made. However, it has been held that a ship of a technically friendly nation which was scuttled and abandoned by its master and crew on the approach of warships of the United States was subject to salvage. [Citations omitted.]

The general rights of salvors are explained in 68 Am. Jur. 2d Salvage §25, as follows:

So far as the property is within the reach or under the control of the salvors, compensation for salvage services presupposes good faith, meritorious service, complete restoration, and incorruptible vigilance. Salvors are required by the nature of their undertaking, and by a due consideration of the large award allowed them for their services, to be vigilant in preventing, detecting, and exposing every act of plunder upon the property saved, and the right of salvage may be forfeited by spoliation, smuggling, or other gross misconduct. Hence, if salvors are guilty of embezzlement, whether at sea, in port, or even after the property is delivered into the custody of the law, it works a forfeiture of their claim to salvage. However, an embezzlement which is a secret and purely individual act will not prejudice cosalvors, although all may become guilty by not preventing the act when it is within their power, or by consenting thereto, or by connivance, concealment, or encouragement afforded to the actors.

While a master will not be refused all pay in the case of acts by him not amounting to positive wrong, such as indifference to the rights of the owners or carelessness, his right to a superior compensation is destroyed and his claim reduced to a level of that of a common mariner.

Salvors are not held responsible for a loss when attempting salvage in good faith and with reasonable judgment and skill. So, it has been held that where an imperiled vessel is lost in the attempt to save her, the vessel attempting the salvage is not liable for the loss if the master of the salving vessel acted in good faith and with reasonable judgment and skill. Absent gross negligence or wilful misconduct, a salvor is not liable. It is said that the law accords the presumption of innocence in favor of salvors. [Citations omitted.]

Additionally, §30 provides:

While the interest of a salvor in salvaged property is called a lien, it is not based, in the absence of an express contract, upon the idea of a debt due by the owner to the salvor for services rendered; rather, it is founded upon the principle that the service creates a property in the thing saved. A salvor can rely neither on the common-law idea of an implied contract to pay for work on or about one's property what the work is reasonable worth, with a lien attached by possession for satisfaction, nor upon any notion of an implied maritime contract for the service with a maritime lien to secure it. The lien for salvage proceeds rather upon the theory of a reasonable reward or compensation, as the case may be, to one who has rescued the res from danger of total loss.

As a general rule, the ship, cargo, freight, etc., make one fund for salvage; and while all who personally assist in saving property are salvors, each set of salvors does not have a separate lien on the particular property saved by it, but all are to be paid from all of the property saved.

A maritime lien for salvage will lie, even for a vessel in her home port, when the nature of the services renders the saving of the vessel or cargo a salvage service. But a lien for salvage does not accrue where a vessel is sunk at her home port under such circumstances that no danger or unusual effort is involved in raising the vessel to the surface and in delivering her either to her owner or to a place of safety. While the fact that a service is rendered pursuant to contract does not change the nature of the service from a salvage service if it is indeed of this nature, yet if a contract is made to perform definite services at a definite price or rate of compensation, even work which would be worthy of the name of salvage does not furnish the basis for a maritime lien.

A salvage lien travels with the res into the hands of whoever chooses to buy, and can be enforced by process against the res regardless of in whose hands it is, subject to questions of laches. The cases which have passed in any way

upon the question tend to hold that an action in rem may be maintained against funds derived from a private sale of the property against which such an action would lie.

A lien for salvage does not pass with the assignment of the claim, the assignment having been held to divest the lien.

A salvage lien takes priority over any maritime lien, except that for seamen's wages. [Citations omitted.]

The procedure to be followed to enforce a claim for salvage is usually an in rem proceeding against the salvaged property. Jurisdiction for such action is within the admiralty courts or the federal district courts. Salvors interested in enforcing their respective claims may wish to contact their private attorneys for assistance; given the varied circumstances of each situation, it would be impossible to offer any guidance herein as to enforcement of claims.

This Office is unaware of any statutes of this State which would require licensure of salvors or otherwise control their activities under the circumstances you have described in your letter. For further information on salvage, we respectfully refer you to 68 Am. Jur. 2d Salvage; 78 C.J.S. Salvage; and cases collected in the West digest system under the topic "Salvage."

Looting

Section 16-7-10 of the South Carolina Code of Laws (1976) provides that certain acts will be considered unlawful in an area designated by the Governor in a proclamation of emergency. Subsection (b) provides:

For any person to enter into the property of another, without lawful authority and with criminal intent; to damage the property of another; or to take possession or otherwise disturb the property of another in any manner [is declared to be an unlawful act in any area designated by the Governor in his proclamation that a state of emergency exists, during the duration of such proclamation]. Any of such acts shall constitute the offense of looting... .

Thus, this statute sets forth the elements of the criminal offense of looting. In any case of suspected looting, it would be necessary to determine whether the above elements are present and thus prosecution may be warranted.

James A. Quinn
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We trust that the foregoing has satisfactorily responded to your inquiry. Because each incident will present different facts and circumstances, as well as a question of intent on the part of the individual involved, this guidance must necessarily be general.

With kindest regards, I am

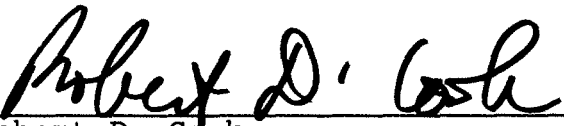
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/nw
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
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