

**NOVEMBER 21, 2017**

### **Canada Introduces Draft Legislation to Enact Wreck Removal and Salvage Conventions**

On October 30, 2017, Canada's federal Parliament introduced Bill C-64, called the Wrecked, Abandoned or Hazardous Vessels Act (C-64), which would give effect to the Wreck Removal Convention of 2007 (WRC) and the Salvage Convention of 1989 (SalvageCon), as well as other related measures. There is no stated timetable for enactment or for coming into force. Coming-into-force would be proclaimed sometime after passage; exactly when may depend to some degree on regulation-making, although the timing is an open question at this point.

There are three major parts to C-64: Part 1 deals with wreck removal via enactment of the Wreck Removal Convention; Part 2 addresses "vessels and wrecks of concern"; Part 3 covers salvage.

#### **Part 1 - Wreck Removal**

Part 1 would enact most of the provisions of WRC; some of the exceptions are noted below. To recall in short:

- WRC creates a regime by which seagoing ships which become or may become wrecks (sunken or stranded, as well as parts of ships, equipment, and cargo) consequent on maritime casualties may be determined to be a hazard, whether to navigation, or as having major harmful consequences for marine environment, coastline, or related interests (directly affected or threatened coastal, port and fisheries activities, tourist attractions and other economic interests, health of coastal population, conservation of marine resources and wildlife, and offshore and other water infrastructure).
- WRC itself applies to a party state's EEZ, although a state can choose to extend application to its own territory proper.
- Obligations on shipowners and operators include reporting, locating, marking and removal of wrecks determined to constitute a hazard. Removal is defined as any form of prevention, mitigation or elimination of the hazard.
- The state may take measures, which include giving directions in relation to the removal of wrecks which are determined to be a hazard and the taking of immediate measures where warranted.
- WRC provides for liability on the part of the owner as regards locating, marking and removal, and there are compulsory insurance or other financial security requirements for ships of 300 GT or more.

Some of C-64's adaptations or exceptions to the WRC regime are as follows:

- Part 1 is extended to non-seagoing ships.
- Canada would extend the application of WRC to Canadian waters, being generally all waters on the landward side of the EEZ.
- Canada would not enact WRC's correlative Article 7 obligation on the part of contracting states to give warning of the location of wrecks.
- C-64 enacts its own provisions, although they largely mirror those of WRC, concerning the criteria by which wrecks are determined to present a hazard.
- C-64's Part 1 liability provisions specifically include costs and expenses as well as loss or damage caused by measures taken in accordance with Part 1.
- Part 1 includes specific requirements as regards the holding and carrying on board a ship of the WRC compulsory insurance certificate.

## **Part 2 - Vessels and Wrecks of Concern**

Part 2 sets up the regulatory machinery to deal with wrecks and also regulates vessels which are not wrecks as defined in WRC as well as those which it is feared might become wrecks. Part 2 applies both in Canadian waters proper as well as the EEZ.

Part 2 also introduces the new notion of a "dilapidated" vessel, which is a ship which meets any prescribed criteria (presumably to be prescribed via regulation) and that is either significantly degraded or dismantled, or that is incapable of being used for safe navigation.

Part 2 would enact a series of specific prohibitions:

- An owner may not leave a dilapidated vessel stranded, grounded, anchored or moored for a period of 60 consecutive days (or number of days prescribed by regulation) without the express consent of the person having authority as owner, manager or lessee of the location.
- A vessel may not be adrift for a period of 48 hours without taking measures to secure it.
- An owner may not abandon a vessel unless permitted to do so, the abandonment is temporary and necessary to avert a danger to human life, or it is a wreck per WRC. There is presumption of abandonment if a vessel is left unattended for a period of two years.
- An owner may not let a vessel become a wreck by reason of failing to maintain it.
- It is prohibited to knowingly cause a vessel to sink or to be stranded or grounded subject to certain exceptions including averting danger to human life.

Part 2 provides for various measures that may be taken by the government in the event of non-compliance or where there are reasonable grounds to believe that a vessel or wreck poses or may pose a hazard. These can include:

- Taking measures to prevent, mitigate or eliminate the hazard.
- Monitoring the measures taken by any person to prevent, etc.
- Directing any person or vessel to take (or refrain from taking) such measures.

Part 2 creates various government powers in relation to dilapidated vessels, including to order repairs, securing, moving, removing, dismantling or destruction, where the vessel is in a federal scheduled harbour or on federally owned and administered property. Other powers depending on circumstances include disposition by sale or otherwise, at the risk and expense of the owner of the vessel.

Part 2 also provides for liability of an owner for costs and expenses incurred in the taking of any of the various measures or in the disposition of the vessel or wreck.

### **Part 3 - Salvage**

Part 3 simply enacts the Salvage Convention of 1989.

There is specific provision for salvage by Crown (government) vessels, but only if the vessel is a tug or is specially equipped with a salvage plant.

### **Other Parts**

Other Parts of C-64 provide for:

- A detailed mandate and role for official receivers of wreck, to whom reports of wreck must be given and who is given powers including to determine salvage awards to persons who have taken possession of a wreck with authorization from the receiver, or who have reported a wreck. The receiver can dispose of a wreck, whether via sale, destruction or dismantling, etc., and has a degree of authority as regards the payment of proceeds of disposition.
- A comprehensive enforcement scheme, which includes search/ seizure/forfeiture powers, as well as penalties or fines for non-compliance. Provisions are designated as either subject to administrative monetary penalties or to fines as offences. Maximum penalties can go up to CAD50,000 for individuals and CAD250,000 for companies or vessels. Maximum fines for offences can go up to CAD1M for individuals and CAD6M for companies or vessels.

We will be monitoring the progress of Bill C-64, and will provide further update in due course.

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Note: This is a synopsis for general information purposes, and as such does not canvass every provision or aspect of the subject-matter. It is not intended as legal advice to be used or relied upon in relation to any specific factual context or actual case.