

# MARINE SALVAGE



## West Coast salvage: A 21st century view

By K. Joseph Spears and Captain Don Mackenzie

Salvage is an important component of having a strong and resilient marine response capability on Canada's West Coast. Recent projects involving the export of energy resources from British Columbia to Indo-Pacific markets have focused attention on maritime issues. Canada is discovering that it is a maritime nation and the West Coast is central to Canada's economic future. Salvage, provided by the private sector, is an integral part of the commercial shipping world and it is not well understood by those not in the business. This article will focus on the underpinnings of the concept of salvage and its growing importance in the 21st century as shipping has become more complex and protection of the marine environment from dangerous and hazardous cargoes has increased. Salvage is both the undertaking of the actual work dealing with a marine casualty as well as the maritime law elements of getting paid for the salvage work which can often prove more difficult than the actual work itself.

Premier Christy Clark, in a recent policy statement, spoke about the need for a world-class response for marine pollution as a term of B.C.'s support for the Northern Gateway. On Canada's West Coast, salvage response by private salvors has been world-class for generations. The B.C. coast is unique in that it is a remote coast line with very little infrastructure, strong tidal currents and a high energy environment — oceanographic speak for big storms

and waves. Some of the strongest tidal currents in the world are found in our waters. To give some perspective on the volume of water running through coastal British Columbia, at Turn Point in Haro Strait near Victoria, four times the volume of the Amazon River changes direction twice-daily.

These tidal currents, some of which exceed 22 knots, deep water fjords and pinnacles present special challenges to salvors. This, combined with a heightened environmental awareness, works to create added pressure on salvors to obtain a successful result. Our waters are also among the most pristine in the world.

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As the recent report of Office of the Auditor General Report indicated, Canada does not have adequate marine spill capability. But none of the recent reports have considered the important role that salvage plays in marine response. This is a subject that needs to be central in any world-class marine response capability. The good news is that much of this capability and capacity on the coast already exists in the towboat, marine eco-tourism and fishing industries. There is a strong web of local knowledge, suitable vessels, equipment, diving contractors and,

most importantly, a "can-do" attitude to get the job done that bodes well for the complexities of the 21st century.

These assets need to be brought front and centre into the awareness of Canada's ocean management. It is equally important to bring both First Nations and coastal communities into the fold to increase response capability on British Columbia's 28,000 kilometres of coastline. We need to encourage private sector companies to learn about salvage response and how that can be co-ordinated and integrated into marine response. Increasing Canada's salvage capability will also increase community resilience as was recently seen with the 7.7 magnitude earthquake off Haida Gwaii. It is crucial and critical that this occur now.

In the past, especially in Canada, salvage has been thought of essentially as a private sector response protecting private property interests — namely the vessel and its cargo — and it had a very large marine insurance focus. The International Maritime Organization (IMO), through its work to develop the international *Salvage Convention 1989*, has recognized the importance of protecting the marine environment. Article 14, the safety net provision, provides an enhanced award for protection of the environment even if the vessel is not successfully salvaged. Internationally, this is still a very controversial topic. Canada adopted the *Salvage Convention, 1989* as a schedule to *Canada Shipping Act, 2001*. It is part of Canadian maritime law.

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Joe Spears/SIC Ocean House Collection

Captain Don Mackenzie, the late Don Carpenter and Dave Unsworth of D and E Towing stand outside the Lloyd's Building in London, circa 2000.

Normally, salvage work is compensated on the basis of success and that is a fundamental underpinning of the Lloyd's Open Form salvage process – “no cure-no pay” that has been in place in the commercial shipping industry for generations. Traditionally on the BC coast, when towboats were salvaging towboats, the rate was double the daily towing rate. Today, a “double-double” may be good for coffee but not for salvage given the complexities and the need to protect the marine environment and the salvor's potential liability.

It is our view that the Lloyd's Open Form (LOF) salvage agreement is the preferred route. This allows a prompt mechanism for payment for salvage services. In the case of the successful salvage of the *Golden Cell*, undertaken by writer Captain Mackenzie in 1999, payment was made within nine months of the completion of salvage. The LOF process uses salvage arbitrators in London who are experienced maritime barristers who have a streamlined efficient hearing process. The LOF process is administered by the Lloyd's Salvage branch in London and it is very user-friendly.

Getting successfully paid in any salvage case is often the hardest part of salvage work. The key is the development of the salvage brief which often is more painful than the salvage itself. Farley Mowat, the great Canadian writer, who never let the facts get in the way of a good story, summed this up well in his classic marine yarn, *Grey Seas Under*. Farley wrote:

*The salvors, meanwhile, have been hard at work preparing an extraordinary document known as a salvage brief. It describes the operation in the most meticulous detail. A really good brief can make you hear the thunder of breakers and yearn for the reassuring feel of a life-belt around your waist...The preparation of the brief is a highly skilled exercise in creative writing. Not fiction, mind you, but subjective fact.*

Conducting salvage on the B.C. coast in the 21st Century is a complex dance involving many parties including the vessel owner, their insurers, surveyors appointed by various groups, regulatory authorities, municipal governments

and the media to just name a few. West Coast mariners have the skills and are up to the challenge to be professional salvors when the call comes. However, we need to have a full and frank discussion about enhancing West Coast salvage capabilities and have more people understand the Lloyd's salvage arbitration process. The LOF works and can provide a solid foundation for increasing British Columbia's marine response capability. Private sector salvage has an important role to play in Canada's pollution salvage capability in the 21st Century. A robust and vigorous West Coast salvage capability, led by the private sector and supported by all levels of government, First Nations and local communities is a valuable asset to pollution counter-measures and Canada's ocean management. This will ensure that British Columbia's pristine coastline is protected for future generations.

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