

Rethinking environmental salvage and salvage law

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Propositions

1. The provision of a cost-effective environmental emergency response by professional salvors in maritime accidents is socially desirable for mitigating environmental harm *ex post*. However, maintaining such a capacity requires intensive financial recourses, which means it may not be feasible for many states, especially small-island developing states.
2. The traditional salvage reward (No Cure–No Pay) cannot adequately incentivize environmental salvage. It is a setting of high transaction costs, and the reward based on the salvaged value of property cannot simulate the conditions and outcomes of a competitive market.
3. The ‘No Cure–No Pay’ payment model is not inherently superior to the service-fee model for environmental salvage. The benefits of preventing environmental harm cannot be reflected by salvaged property. Additionally, the high information cost for *ex ante* risk assessment makes the information asymmetry argument not applicable. Effective monitoring may solve the agency problem between the salvor and the salvee.
4. Marine insurers have significant influence not only on the decision-making of private parties but also on the attempts of law-reform. Such influence from insurers must be taken into consideration in law-reform as the private interest may not always align with the public interest.
5. Public intervention in environmental emergencies is a double-edged sword. It can provide solutions, such as by demanding an environmental emergency response when there is no identifiable liable polluter, but it could also create problems if the public authority does not have incentives to take optimal care in its decision-making regarding the intervention.
6. Optimal *ex ante* safety regulation cannot prevent all environmental emergencies and using tort law rules as incentives for decision-makers is necessary. However, where the uncertainties render *ex ante* risk assessment difficult, relying solely on liability rules is insufficient to provide optimal incentivization.
7. The incentives for salvors should be a combination of favorable payment for services / carrot and reasonable liability for salvorial negligence in environmental salvage / stick. The overall incentives should make environmental salvage worthwhile for the salvor.
8. The standardization of the salvor’s effort and price to be paid *ex post*, supported by low-cost alternative dispute resolution mechanisms, is the key.
9. Maritime casualties generate *prima facie* negative externalities, but also generate positive externalities for certain groups, such as lawyers and scholars.