

CHAPTER 5

Marking of Sunken Wrecks

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5-1 GENERAL

5-1-1 Basis—

A. All regulations, procedures, and policies concerning the marking of sunken wrecks which affect the public are published in Title 33, Part 64, Code of Federal Regulations. The statutes interpreted, applied or giving authority are cited therein.

5-1-5 Purpose—

A. The purpose of this chapter is to set forth procedures and requirements for the guidance of all persons in the Coast Guard concerned with administering the provisions of Title 33, Part 64, Code of Federal Regulations.

5-1-10 Definitions—

A. Certain terms as used in this chapter are defined as follows:

(1) *Immediately* as stated by the law requiring an owner to mark a sunken wreck is construed to mean within a reasonable time judged according to the individual circumstances of each case. What might be excusable delay in one case might be culpable delay in another.

(2) *Navigable waters of the United States* are those waters which are navigable in fact and which

by themselves or by their connections with other waters, form a continuous highway for commerce between the States or with foreign countries.

(3) *Suitable* means that it must be fitting and appropriate to accomplish the purpose intended. When an owner is unable to establish immediately a standard marking as hereinafter described, he is permitted by regulation to establish the most suitable temporary marking available under the circumstances, which shall include a light by night, and to maintain this temporary marking for a reasonable time pending the removal or abandonment of the wreck, or the establishment of a standard marking. Determination of suitability of the temporary marking and the reasonableness of time permitted before a standard marking is required to be established is dependent upon the individual circumstances of each case.

5-2 DUTY OF OWNER

5-2-1 Basic Requirement—

A. The owner of any vessel which becomes wrecked and sunk, accidentally or otherwise, in the navigable waters of the United States is required to mark immediately such obstruction with a buoy or daybeacon by day and a light at night, and to

maintain such markings until the sunken vessel is either removed or its abandonment established. Such markings are required to conform to the lateral system of aids to navigation characteristics.

B. In the event the owner is not able to mark immediately a sunken wreck in accordance with the lateral system, he is required to maintain the most suitable markings available under the circumstances which will warn navigation of the sunken wreck until he has opportunity to establish the standard markings.

5-2-5 When Effective—

A. This duty becomes effective when the owner, master or other agent has knowledge of the existence of the wreck.

5-2-10 Report Required—

A. The owner of any such wreck is required to make a report to the nearest Officer in Charge, Marine Inspection, United States Coast Guard, setting forth the following:

- (1) Name of wreck and accurate location.
- (2) Depth of water over the wreck.
- (3) Location and description of marking established or proposed (by the owner).

5-2-15 Payment for Coast Guard Marking—

A. The owner is required to pay the costs of placing, maintaining, and removing any marking established by the Coast Guard to mark a wreck sunk in the navigable waters of the United States until the obstruction has been removed or its abandonment determined. (See Part 5-9 for determination of charges.)

5-3 AUTHORITY OF COAST GUARD

5-3-1 Basic Provisions—

A. The Coast Guard is authorized to mark for the protection of navigation any sunken wreck existing in the navigable waters of the United States whenever the owner of such wreck has failed to mark, or in the judgment of the Coast Guard has failed to mark suitably, such wreck as described herein, and to maintain such marking until the wreck has been removed or its abandonment established.

B. The Coast Guard is authorized to mark a wreck sunk beyond the territorial jurisdiction of the United States but within the coastal waters of the United States, its territories or possessions (those places where aids to navigation had been established on 26 June 1948), or at places where naval or military bases are located if such marking is necessary for the safety of the armed forces or of the commerce of the United States.

C. After abandonment the Coast Guard may, at the request of the Department of the Army, mark

or continue to mark the sunken wreck for and on behalf of that department.

5-3-5 Limiting Conditions—

A. The marking of a sunken wreck by the Coast Guard is for the protection of navigation and not for the sole benefit of the owner. Therefore, a request by the owner for the Coast Guard to mark shall be construed to indicate only his inability to do so. Decision of the Coast Guard to mark shall be based on the need of the marking for the protection of navigation as determined by the Coast Guard.

5-3-10 Responsibility—

A. When an owner has failed to mark or has improperly marked a sunken wreck or obstruction and the Coast Guard has marked the wreck, liability for damage caused by improper marking of the wreck may be transferred to the Federal Government as of the moment that the Coast Guard marking was established. Commanding officers of Coast Guard units establishing markings, whether by their own discretion in emergent cases or by direction of a district commander, should exercise extreme caution that the marking which they establish conforms to the standards set forth herein and will adequately indicate the presence of the obstruction for the protection of navigation.

5-4 AUTHORITY OF THE CORPS OF ENGINEERS

5-4-1 Basic Provisions—

A. The Corps of Engineers, under the Secretary of the Army, is the agency charged with the protection and preservation of the navigable waters of the United States, and, as such, is authorized to remove or destroy any sunken obstruction endangering navigation in such waters when it has existed for a period of more than 30 days or when its abandonment can be legally established in a less space of time. Under emergency, in the case of any vessel or other similar obstruction sinking or being unnecessarily delayed in any Government canal or lock, or in any navigable water of the United States so as to stop, seriously interfere with, or especially endanger navigation, the District Engineer may take immediate possession in order to remove or destroy the obstruction.

5-4-5 Duty To Mark Abandoned Wreck—

A. As soon as the abandonment of any sunken vessel or other similar obstruction constituting a menace to navigation in the navigable waters of the United States has been established, it is the duty of the Corps of Engineers to keep it suitably marked pending its removal. However, the Coast Guard may, at the request of the Corps of Engineers, establish or continue a suitable marking on behalf of that agency. The cost of any such marking shall be borne by the Department of the Army from the time the Corps of Engineers assumes jurisdiction.

5-5 ABANDONMENT OF SUNKEN WRECK**5-5-1 Definition—**

A. The legal abandonment of a sunken wreck is the complete relinquishment of all ownership, right, and title to the property by a clear, unequivocal, and decisive act of the owner. An abandoned wreck has no owner.

5-5-5 Effect of Abandonment—

A. The owner of a wreck which is sunk without fault on his part may abandon the wreck and, thereby, cannot be held responsible for its marking or removal, nor for any damages resulting to other vessels colliding with such wreck. However, a person who willfully permits a vessel to sink in the navigable waters of the United States may not thus relieve himself of responsibility by merely abandoning the wreck.

5-5-10 Establishing Abandonment—

A. Abandonment may be established by any clear, unmistakable, voluntary act indicating a purpose to repudiate ownership. Such act is generally accomplished by the owner declaring his intent in a letter, called "notice of abandonment," addressed to the Corps of Engineers.

B. Under certain conditions when the navigation of any navigable water of the United States is obstructed or endangered by a sunken wreck, or other similar obstruction, and such obstruction has existed for a longer period than 30 days, the obstruction may be considered as abandoned so as to subject it to removal or destruction by the Corps of Engineers.

5-6 METHOD OF MARKING SUNKEN WRECK**5-6-1 Basic Requirement—**

A. A sunken wreck is required to be marked by a buoy or daybeacon by day and a light at night. The color, numbering, shape, and light characteristics of such aids must conform to the lateral system of aids to navigation characteristics.

5-6-5 Color Characteristics—

A. If a wreck may be safely passed on one side only, it shall be marked by a solid red or a solid black buoy or daybeacon. If a wreck may be safely passed on either side, it shall be marked by a red and black horizontally banded junction buoy or daybeacon, the color of the uppermost band denoting the preferred side.

5-6-10 Light Characteristics—

A. The light color characteristics shall be red on solid red buoys, green on solid black buoys, and either red or green, depending upon the color of the uppermost band, on horizontally banded junction

buoys. *except white may be used where no* The light flashing characteristics shall be quick flashing on solid colored red or black buoys, and interrupted quick flashing on horizontally banded junction buoys. *preferred*
5-6-15 Numbers and Letters— *channel is indicated, greater visibility is desired, or when red or green conflicts with existing lights!*

A. All solid color buoys or daybeacons marking sunken wrecks shall be numbered in proper sequence with the other aids to navigation in the same channel or waterway. The letters WR shall be used on all wreck markings and shall prefix the regular number or letter, if any.

5-6-20 Location of Lateral Markings—

A. Markings shall be placed on the seaward or channelward side of the wreck as near to the wreck as possible, and shall be so located that a vessel may pass close aboard the marking with safety.

B. If necessary, in order to reduce any possibility of confusion, more than one aid shall be used.

5-6-25 Additional Markings—

A. In addition to the lateral aids described above, a fixed white light may be exhibited from the exposed portion of the wreck.

5-7 PROCEDURE: COAST GUARD UNIT**5-7-1 Report Required—**

A. When a commanding officer receives a report of or discovers a sunken wreck, he shall obtain as much of the following information as practicable and transmit it to the district commander by dispatch:

- (1) The name, description, and accurate location of the wreck.
- (2) The name and address of the owner or his agent.
- (3) The depth of water over the wreck.
- (4) The action or intent of the owner to mark the wreck, and when.
- (5) The type, description, and location of the marking, if any.
- (6) His opinion as to whether or not immediate marking of the wreck by the Coast Guard is necessary for the protection of navigation.

NOTE.—This does not relieve the owner of his obligation to submit a report as described in Paragraph 5-2-10 (A).

B. An Officer in Charge, Marine Inspection, shall also notify the district engineer in whose jurisdiction the wreck is located.

5-7-5 Communication With Owner—

A. If in contact with the owner or his agent, the commanding officer shall:

- (1) Inform him of his legal duty to mark the wreck immediately.
- (2) Inform him that if he fails to do so within a reasonable period of time, and if the district commander considers the marking of the wreck required

for the protection of navigation, the Coast Guard will establish a suitable marking, and that the charges for the establishment, maintenance and discontinuance of such marking will accrue against the owner until such time as he may establish a suitable marking, the wreck is removed, or its abandonment established. If practicable, he shall be advised of the estimated cost of such marking if performed by the Coast Guard.

(3) Inform him of his duty to make a report to the nearest Officer in Charge, Marine Inspection, as stated in Paragraph 5-2-10 (A).

(4) Inform him that the intent of the Coast Guard to establish a suitable marking upon his failure or inability to comply with his statutory duty does not relieve him of his legal responsibility until such time as a suitable marking has been actually established by the Coast Guard.

5-7-10 Records Required—

A. The commanding officer shall maintain a complete record of all reports, conversations, correspondence, and action taken.

5-7-15 Establishing Wreck Markings—

A. When establishing aids to navigation to mark a sunken wreck, the commanding officer shall adhere to the provisions of Part 5-6 with respect to any details of the marking not otherwise specified by the District Commander.

5-7-20 Officer-in-Charge—

A. The duties of a commanding officer as set forth in this part are also applicable to an officer in charge; except that an officer-in-charge shall submit all reports to a district commander via his commanding officer if his unit is under a group or section.

5-7-25 Special Caution—

A. The requirements of this section are in addition to any other duties imposed upon a commanding officer or officer-in-charge and shall not be construed to limit his initiative nor relieve him of performing the mission of his unit.

5-8 PROCEDURE: DISTRICT COMMANDER

5-8-1 Initial Determination—

A. Upon receipt of information of a sunken wreck within his jurisdiction, a district commander shall determine:

(1) Whether a marking is necessary for the protection of navigation.

(2) Whether the marking provided by the owner, if any, is suitable.

B. If the exact location of a sunken wreck is in doubt, the district commander should request the Corps of Engineers to locate or assist in locating the wreck.

5-8-5 Action Before Abandonment—

A. When the owner of a sunken wreck has, in the judgment of the district commander, failed suitably to mark the wreck as described in section 5-2-1, and if a marking is necessary for the protection of navigation, the district commander shall establish a suitable marking.

B. The period of time allowed the owner to mark suitably a sunken wreck before action is taken by the Coast Guard to mark the obstruction, shall be determined by the circumstances in each case. (See sec. 5-1-10.) Every effort shall be made to permit the owner to mark the wreck or, if Coast Guard marking is necessary, every effort shall be made to minimize the expenses.

C. The district commander is authorized to have the marking of a sunken wreck performed by contract when deemed advisable in the interest of expediency or economy.

5-8-10 Action After Abandonment—

A. When the abandonment of a sunken wreck has been established, the marking of such wreck will be undertaken only upon request of the cognizant district engineer. However, a marking already in existence shall not be discontinued except at the request of the district engineer.

B. If, subsequent to the abandonment of a sunken wreck, the district commander is not advised whether the Corps of Engineers wishes the wreck markings to be established, continued, or discontinued, the district commander shall request the advice of the district engineer.

C. Inasmuch as the cost of tender time generally forms a large part of the total charge for Coast Guard marking, this amount can frequently be reduced by arranging for discontinuance of a wreck marking during a tender's regular itinerary rather than by requiring a separate trip for this purpose.

5-8-15 Communication With Owner—

A. Regardless of whether or not the Coast Guard unit first receiving a report of the wreck has been in contact with the owner, the district commander shall communicate with the owner or his representative by the most appropriate means under the circumstances and advise him of his legal responsibilities and duties with respect to marking the wreck and shall ascertain his intent to comply with the regulations. The district commander shall inform the owner of the charges for Coast Guard marking thus far incurred or pending, if any. All verbal communications shall be promptly confirmed in writing.

B. In those cases in which the Coast Guard has or intends to mark a sunken wreck located in the coastal waters of the United States, its territories or possessions, but beyond the territorial jurisdiction of the United States, the district commander shall communicate with the owner or his agent and advise him of the action taken or proposed by the Coast Guard. Since the owner is under no statutory obligation to reimburse the Coast Guard for the costs

of marking the wreck, he should be requested to bear the expense of marking until the wreck is removed or abandoned, inasmuch as such marking minimizes his potential civil liability.

5-8-20 Communication With Corps of Engineers—

A. The cognizant district engineer shall be promptly advised of any report received by the district commander, concerning a sunken wreck or similar obstruction.

B. If a "Notice of Abandonment" is received addressed to the district commander, it shall be immediately forwarded to the cognizant district engineer; the owner of the vessel shall be advised of such action.

5-8-25 Records Required—

A. The district commander shall maintain a complete record of all reports, communications, and action taken with respect to the marking of a sunken wreck.

5-9 CHARGES FOR THE MARKING OF SUNKEN WRECKS

5-9-1 Owner of Sunken Wreck—

A. Charges for the establishment, maintenance and discontinuance of marking of a sunken wreck by the Coast Guard will be invoiced to the owner thereof at the actual cost to the Coast Guard if performed by contract, or according to the charges set forth in Part 74 of the Aids to Navigation Regulations, CG-208 if performed by Coast Guard facilities, and shall begin with the date of marking and continue until notice is received by the district com-

mander from the district engineer that the wreck has been removed, or no longer constitutes a menace to navigation or that its abandonment has been established.

B. Charges for the removal of any aids to navigation established by the Coast Guard shall be invoiced to the owner unless the district engineer requests the continued marking of the sunken wreck.

C. Charges shall be submitted to the owner each month and shall not be permitted to accrue.

D. In the event that the owner refuses to pay, the claim of the United States Government against the owner shall be referred to the Commandant (L) in triplicate and shall include all correspondence, reports, etc.

5-9-5 Corps of Engineers—

A. Charges for the marking of sunken wrecks by the Coast Guard for the Corps of Engineers shall be invoiced to the cognizant district engineer at the actual cost of the Coast Guard if performed by contract or in accordance with Part 74 of the Aids to Navigation Regulations, CG-208 if performed by Coast Guard facilities. The charges shall begin with the date that the Coast Guard establishes the marking, or if already marked, with the date that abandonment is established and shall continue until notice is received by the district commander from the district engineer that the marking is no longer required.

B. Charges shall be billed every 6 months.

5-9-10 Disposition of Receipts—

A. Receipts collected in accordance with the foregoing shall be deposited in accordance with the Comptroller Manual, CG-264.

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