

BRITISH PORTS ASSOCIATION

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Guidance: dealing with abandoned vessels in harbours

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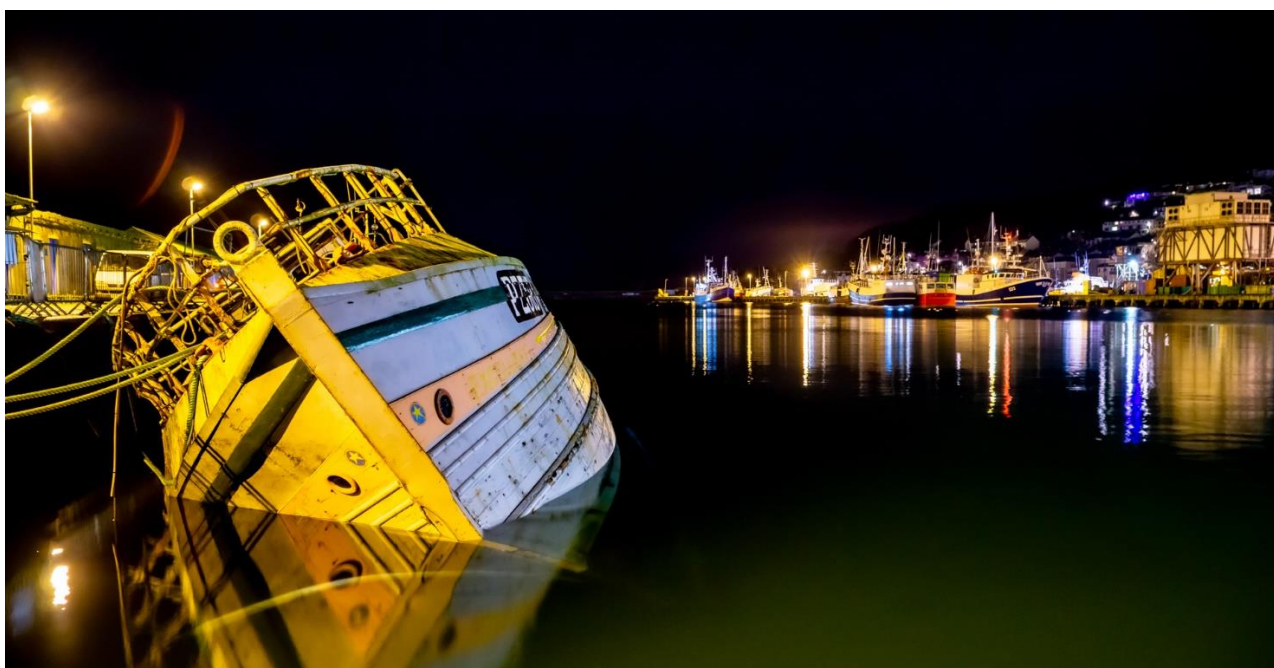
Prevention

Dealing with abandoned vessels in harbours

This document has been prepared by the British Ports Association (BPA). Vessel abandonment has increasingly become an issue in some ports, harbours and marinas. This is where particularly, but not exclusively, small boat owners may dump their leisure vessels or 'sell' an unrepairable vessel to uncontactable person. On occasion, fishing vessels and commercial vessels are also abandoned. Any of these vessels can obstruct navigational channels or moorings for other port users or present a pollution and/or environmental risk. On some occasions, the owners may be evading charges, and the process of dealing with vessels can be costly and time intensive for the harbour authority.

The BPA is firmly of the view that vessel owners should be responsible and liable for any associated costs resulting from vessels in harbours. However, as this is not always a reality, we are seeking to help members deal with this issue. Where suitable, we will also discuss such issues with government regulators and port user representatives, if there is an opportunity to do so.

This guide includes some suggested steps ports might want to take in dealing with abandoned vessels. Please note, this document is not formal guidance and only aims to provide an overview of the options available to ports for dealing with abandoned vessels. Ports may also wish to gain formal advice from a legal advisor.



Step One: Gather Information

Basic details about the vessel

- Commercial or recreational?
- Size of vessel?
- Estimated value?

Is the vessel a wreck?

Section 255 (1) of the Merchant Shipping Act 1995 defines a wreck as being “jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water”

Is it capable of being towed? Is there somewhere to keep it?

What is the status of the vessel owner and/or mooring holder?

- Company or individual?
- Contact details?
- Based in the UK or abroad?
- Their financial status?
- Does the seller have an agent that the port has been or could be communicating with?

What terms regulate the vessel’s presence in the port, harbour or marina?

How long has the vessel been in the port, harbour or marina?

Is a debt owed against the vessel?

If yes, what is the outstanding debt owed? How does this compare to the value of the vessel? How long has this been outstanding? What attempts have been made to recover the debt and contact the seller? Are there any other known debts, mortgages, etc against the vessel?

Step Two: Take preliminary action

Before a decision is made on whether to exercise your rights to sell the vessel or remove the wreck, a number of steps should be taken:

- Attempt to contact the vessel owner in writing (by post and email if possible) at least twice over a number of months, indicating that failure to satisfy the outstanding debt will result in the vessel being sold or removed.
- Carry out a brief wider investigation into the status or whereabouts of the owner to ensure that there is no other means of contacting them (for example, by contacting local ships agents, any known business associates, or an internet search).
- Carry out a brief investigation into the vessel to ascertain if any other parties have an interest in the vessel (for example, any charges held over the vessel or possible part ownership). Some ports may subscribe to the website [Sea-web](#), which contains information about vessels.

If you feel that you have exhausted all options in obtaining payment, you may wish to consider the options below. This process has a cost involved, and it is worth considering the likelihood of recovering said costs.

Step Three: Consider available Options

Option 1: Use your powers under local legislation (if relevant)

You should first check your **local Act(s)** as they may contain **powers to remove and/or sell wrecks and/or abandoned vessels**. Your local Act/s may incorporate section 56 of the Harbour, Docks and Piers Clauses Act 1847 (see option 5 below).

For example, the Ipswich Dock Act (clause 32) [here](#) and Shoreham Port Act (clause 13) [here](#) contains information on the Harbour Master's powers in relation to the removal of wrecks.

Option 2: Exercise contractual lien where there is a debt against the vessel (if relevant)

Some ports, harbours, and marinas may have a contract with the vessel owner that includes an appropriate lien provision. For example, your **terms and conditions** may include a **general lien with a right of sale**. If so, the specific requirements listed here must be followed. For example, please refer to Fleetwood Haven Marina's terms and conditions (clause 15) [here](#).

During this process you should take into consideration the status of the owner.

- If they are an **individual** (e.g., a customer using a berth at a marina) you may wish to act with greater caution, perhaps sending more notices demanding payment and allowing more time for a response. You should also go to reasonable lengths to contact the owner.
- If the owner is a **company** that is thought to be going into insolvency soon, then the port should act to exercise the lien as quickly as possible. Throughout the process the port should act responsibly.

To exercise a contractual lien, a **notice** must be sent to the customer informing them that you are exercising a lien in respect of the debt, in accordance with your contractual rights. You may wish to develop a template for this.

If your terms and conditions do not include details of a contractual lien then the port does not have the right to sell a vessel under a lien.

On completion of the sale of a vessel, the **proceeds of the sale** may be applied to satisfy the debt (refer to option 4 below for information about what options are available for selling a vessel). What will constitute the debt will depend on the wording of the lien and may include all amounts owed to the port and the costs related to exercising the lien (e.g., legal costs). If the debt is less than the amount the vessel was sold for, the excess must be held on trust for the owner until such time as they come forward. Typically, there is no time limit stipulated for how long such funds should be held for. Before any such funds are dissipated the port should be as satisfied as it can be that the owner will not be claiming them.

In terms of **passing title** to the vessel to a new owner, the port will most likely not be in a position to pass original documents of title, registration, etc. However, the port is entitled to pass on good title via a Bill of Sale to a new owner, assuming the terms and conditions give the port authority of the vessel owner to sell the vessel as an agent on behalf of the original owner of the vessel. If you have no experience with a Bill of Sale or Sale Agreements, you may wish to seek legal advice.

Option 3: Rely on statutory powers of distraint and sale of abandoned vessels where there is a debt against the vessel

If your terms and conditions do not include a right of sale contractual lien (as per option 2) then you may be able to rely on Section 44 of the Harbour, Docks and Piers Clauses Act 1847 (the 'HDPCA'). This is assuming that the local legislation governing your port has incorporated the HDPCA. You should check this before going any further.

This process is a more complicated method of sale than exercising a lien as there is a specific statutory process of distraint and sale that must be carried out. The HDPCA is a historic piece of legislation and in exercising its powers under these provisions, the port must act reasonably and in good faith, in order to illustrate that it is not acting "ultra vires" in selling the vessel. The port must be prepared to defend this decision in the event that its sale of the vessel is challenged.

Option 4: Rely on the powers under the Merchant Shipping Act

This option is most appropriate where action to remove the vessel is not urgently necessary or where there is some doubt about whether a vessel does impede navigation, the vessel does not necessarily have to be a wreck. This option permits the vessel to be destroyed and imposes a power of sale. (See s.252 of the Merchant Shipping Act 1995 on the next page.)

A port can take possession of the vessel, remove it, or sell it and reimburse themselves if they consider that vessel is likely to become an obstruction or danger to navigation. There is no guidance as to what is to be considered to be a 'stranded' or 'abandoned' vessel, an 'obstruction' or 'danger to navigation' so it is up to the port to use their judgement on this.

Selling a vessel

Under Section 252(5) of the MSA, a notice of at least seven days of the intended sale must be given by advertisement in a local newspaper circulating in or near the area over which the port has control.

Before the vessel is sold, the owner is entitled to have the vessel delivered to them on payment of its market value. The market value is to be determined between the owner and the local authority, failing which by a person appointed by the Secretary of State.

The selling options available to a port are auction held by boating specialists, private listing and sale, or sell for scrap.

Demolishing a vessel

Ports may opt to demolish an abandoned vessel if the owner is untraceable, and the vessel has little to no value, is in a bad state of repair or unrepairable (meaning if the port were to try selling the vessel it would be impossible to find a buyer). After every effort has been made to contact the owner (see information above), demolition of the vessel may be the only suitable option.

Demolishing and dismantling a vessel must be carefully planned and carried out in a way that prevents danger by practitioners with the relevant skills, knowledge, and experience. Ports may wish to engage a contractor to carry out this work or may wish to do this themselves, assuming they have the appropriate skills, knowledge, and experience.

Please refer to the Health and Safety Executive's page on demolition here for detailed information. Ports should consider injury from falling materials, uncontrolled collapse, hazardous materials, noise, vibrations, and worker environment.

The port needs to assess the risks involved and manage them as far as reasonably practicable.

Section 252 of the Merchant Shipping Act 1995 (the 'MSA')

- (1) "where any vessel which has sunk, stranded, or abandoned in... any harbour... under the control of a harbour authority... in the opinion of the authority to be or likely to become, an obstruction or danger to navigation or lifeboats... that authority may exercise any of the following powers.
- (2) Those powers are –
 - (a) to take possession of, and raise, remove or destroy the whole or any part of the vessel and other property to which the power extends;
 - (b) the light or buoy the vessel or any part of the vessel and any such other property until it is raised, removed or destroyed; and
 - (c) subject to subsections (5) and (6) below, to sell, in such manner as the authority think fit, the vessel or part of the vessel so raised or removed and any other property recovered in the exercise of the powers conferred by paragraph (a) or (b) above;
 - (d) to reimburse themselves, out of the proceeds of the sale, for the expenses incurred by them in relation to the sale.
- (3) The other property to which the powers conferred by subsection (2) above extend is every article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the vessel.
- (4) Any surplus of the proceeds of a sale under subsection (2)(c) above shall be held by the authority on trust for the persons entitled thereto.
- (5) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, no sale shall be made under subsection (2)(c) above until at least seven days notice of the intended sale has been given by advertisement in a local newspaper circulating in or near the area over which the authority have control.
- (6) At any time before any property is sold under subsection (2)(c) above, the owner of the property shall be entitled to have it delivered to him on payment of its fair market value.
- (7) The market value of property for the purposes of subsection (6) above shall be that agreed on between the authority and the owner or, failing agreement, that determined by a person appointed for the purpose by the Secretary of State.
- (8) The sum paid to the authority in respect of any property under subsection (6) above shall, for the purposes of this section, be treated as the proceeds of sale for the property.
- (9) Any proceeds of sale arising under subsection (2)(c) above from the sale of a vessel and any other property recovered from the vessel shall be treated as a common fund.
- (10) This section is without prejudice to any other powers of a harbour authority or conservancy authority.

Option 5: Rely on powers under the Harbour, Docks and Piers Clauses Act 1847

This option is most appropriate where the port knows the identity of the owner of the vessel and/or removal of the vessel is urgently necessary. There is a liability imposed on the owner of the vessel to pay for the removal. This option allows the vessel to be removed, with expenses to be paid by the owner or the vessel to be sold if the owner does not pay the relevant expenses. The vessel cannot be destroyed using this option. Section 56 of the HDPCA states that:

“The harbour master may remove any wreck or other obstruction to the harbour, dock, or pier, or the approaches to the same, and also any floating timber which impedes the navigation thereof, and the expense of removing any such wreck, obstruction, or floating timber shall be repaid by the owner of the same; and the harbour master may detain such wreck or floating timber for securing the expenses, and on nonpayment of such expenses, on demand, may sell such wreck or floating timber, and out of the proceeds of such sale pay such expenses, rendering the overplus, if any, to the owner on demand.”

It is thought that most ports have special legislation which incorporates section 56 of the HDPCA, which empowers the harbour master to remove wrecks and other obstructions which impeded navigation. You will need to check whether your local legislation does incorporate section 56 of the HDPCA.

This is a very useful power to have in an emergency as it does not impose any formalities and notices do not need to be served. The Harbour Master can go straight in without prior warning and remove the vessel.

However, before taking action under Section 56 of the HDPCA, the port must themselves form the opinion that the vessel has sunk, stranded, or abandoned in their harbour or near to the approach thereto, is, or is likely to become, an obstruction or danger to navigation. If the Harbour Master cannot be sure that this criteria is fulfilled, there will be a risk of liability for exceeding their statutory powers if their action causes damage.

The power to remove the wreck does not include the power to destroy, so the port will need to take the wreck to a safe place. This can prove practically challenging in terms of where to put it, especially if the wreck does not float.

The wreck may be detained in order to secure the expense and if payment is not made on demand, the wreck may be sold and the expenses recovered out of the proceeds.

Section 57 of the HDPCA enables the Harbour Master to remove unserviceable vessels and “lay them on any part of the strand or sea shore or other place”, to recover the cost by an application to the Magistrate’s Court and to levy distress or sell the vessel if the debt is not paid. Section 57 of the HDPCA states that:

“No vessel which shall be laid by or neglected as unfit for sea service shall be permitted to lie within the limits of the harbour, dock, or pier, but the harbour master may cause every such vessel to be, at the expense of the owner thereof, removed from the harbour, dock, or pier, and laid on any part of the strand or sea shore, or other place where the same may, without injury to any person, be placed; and the charges of removing or placing such vessel may be recovered from the owner of such vessel by summary complaint, in England or Ireland before any justice of the peace, and in Scotland before the sheriff; and in case of refusal or neglect of payment of such charges for the space of seven days after having been awarded by such justice or sheriff, the harbour master may levy such charges by distress and sale or poinding and sale of such vessel, or of the tackle, apparel, or furniture thereof, or any part thereof, and the justice or sheriff shall issue his warrant accordingly.”

Section 58 of the HDPCA enables the Harbour Master to unmoor and remove a vessel that is incorrectly moored. This is a power applies to serviceable vessels. The Harbour Master is required to protect the vessel by putting people on board before cutting it loose. However, the power can be and is used for removing vessels that are illegally moored without having paid any dues. Section 58 of the HDPCA states that:

“If the master of any vessel in or at the harbour, dock, or pier, or within the prescribed limits, if any, shall not moor, unmoor, place, or remove the same according to the directions of the harbour master, or if there be no person board of any such vessel to attend to such directions, the harbour master may cause such vessel to be moored, unmoored, placed, or removed as he shall think fit, within or at the harbour, dock, or pier, or within the prescribed limits, and for that purpose the harbour master may cast off, unloose, or cut the rope, or unshackle or break the chain, by which any such vessel is moored or fastened; and all expences attending the mooring, unmooring, placing, or removing of such vessel shall be paid to the undertakers by the master of such vessel: Provided always, that before the harbour master shall unloose or cut any rope, or unshackle or break any chain, by which any vessel without any person on board to protect the same shall be moored or fastened, he shall cause a sufficient number of persons to be put on board of such vessel for the protection of the same.”

Other Considerations

What if the vessel has sunk?

You must inform MCA Receiver of Wreck¹ and your General Lighthouse Authority.

You should carry out a risk assessment which considers costs, marking, pollution, navigational safety, notice to mariners, etc.

You should engage a salvor or wreck removal contractor to carry out the work under a recognised wreck removal contract.

Salvage plan

For either a vessel that has been abandoned or has sunk, the port should prepare a detailed salvage plan, which may include:

- Method statement for raising the vessel
- Any temporary lay-by berth
- Arrangements for limiting environmental damage
- How pollution will be managed, if this occurs
- Agreed delivery location
- Details of any diving operations
- Details of any Environment Agency licences
- Details of final disposal, whether this includes the sale of the entire vessel or part thereof (see list of options above)

Other considerations and things to do

- Inform your insurer, where relevant
- Consider seeking legal advice

Prevention

The above measures are very much to be used when issues arise but ports and harbours are also able to design some preventive measures which would make it more difficult for vessel owners to disappear or abandon vessels. This could include more rigorous conditions for mooring arrangements, rules on vessel upkeep and insurance in ports, and even registers of boat owners.

¹ <https://www.gov.uk/government/groups/receiver-of-wreck>