

DEALING WITH
**Problem Vessels
and Structures**
IN B.C. WATERS





Readers are cautioned that this paper is not legal advice. It is the intention of Ministry of Forests, Lands and Natural Resource Operations to update this paper as provincial and federal programs evolve.



Introduction

This guide deals with the subject of problem vessels and structures on Provincial Crown foreshore and Provincial Crown Land covered by water. With rare exceptions all lake and river beds in B.C., along with most sea beds are owned by the Province; however, the federal government owns or manages a number of harbours, ports and wharf or dock facilities throughout British Columbia.

In recent years, cases of unauthorized vessels or structures that are anchored or moored, sunk, beached or wrecked on Provincial Crown Land have been increasing, along with demands on government to take action.

Dealing with problem vessels and structures can be highly complex due to the mix of provincial ownership of land, federal jurisdiction over navigation and shipping and sometimes conflicting federal and provincial laws. What governments do depends on specific facts of the situation, such as whether the cause of concern is a vessel, wreck or some other type of structure; the nature of the problem; who owns the bed of the waterway in question; and what laws apply in a given situation.

Determining what laws apply can be complicated by the fact that Provincial laws or local government bylaws that would be applicable to a structure or vehicle on dry land may not apply to vessels because they either conflict with federal laws such as the *Canada Shipping Act*, or infringe on the core of the federal government's responsibility for navigation and shipping. For example, the Province normally has the ability to take action to remove unauthorized structures that are on provincial Crown land. However, the same provincial laws do not apply to vessels that are anchored for short periods while actively being used in navigation. Similarly, local government zoning bylaws that regulate the size of a floating structure will not be applicable to a vessel. Provincial laws allowing seizure of a vessel in trespass will not be operative if they conflict with federal law dealing with a "wreck."

Often, there is no simple answer to the question: *Who should be dealing with this problem?*

Usually the answer will depend on the particular facts of each case; often legal advice is necessary to determine the limits of governmental authority. In some cases, there may be unavoidable legal uncertainty regarding how specific laws apply.

Because of these complexities, it is often necessary for all levels of government to work together in a coordinated manner. Solutions can involve one level of government authorizing another level to take action, with resources to solve problems coming from different levels of government as well as local groups.

Vessels, wreck and other structures

The Province's ability to take action is more limited in relation to "vessels" and "wreck" than it is in relation to other structures. Both "vessels" and "wreck" are legal terms used in the *Canada Shipping Act* and interpreted by the courts. What is or is not a vessel or wreck will depend on the specific facts of a situation.

Generally speaking, a vessel is something that floats, has been designed for navigating through water and continues either to be used or is intended to be used for navigation regardless of its means of propulsion. For example, floating houses that are not designed for or used in navigation are not vessels. Likewise, a floating wooden platform designed for boat moorage is not a vessel, even if it is registered as a ship and has an outboard attached. Here are some examples of situations where courts have said that a structure designed for navigation may no longer qualify as a vessel:

- *A ship converted to a floating restaurant from which the engines have been removed.*
- *An oil-tank barge tied to a dock and used as an office with no intention that it be used in navigation.*
- *Forestry barge camps that are towed a short distance every spring, tied to the shore, connected to onshore water and used as living accommodations for the remainder of the year.*

The *Canada Shipping Act, 2001* establishes procedures for dealing with "wreck" where the owner is unknown and these procedures are paramount to provincial process. Where there is a conflict with the federal regime, provincial law will be inoperative to the extent of any incompatibility. Under the *Canada Shipping Act*, "wreck" can include wrecked aircraft, cargo lost from vessels in distress, as well as vessels or parts of vessels that have grounded or sunk during storms at sea and rendered incapable of navigation to the point where they are effectively a total loss. "Wreck" also includes "derelict", i.e. a vessel or cargo that has been abandoned and deserted at sea without any hope of recovery. A vessel that is sunk at its moorings or has dragged its anchor and run up on the beach will not be a wreck dealt with by the Receiver of Wreck under the *Canada Shipping Act* if: the owner is known, it has not been abandoned nor damaged to the point of being a wreck.



Vessels and other structures in trespass on Crown Land

Generally, the Province requires persons building or placing structures on provincial land to obtain authorizations under the *Land Act* or other legislation. If a person does not have the required authorization, the person is in trespass, and the Province can take action to remove the trespasser. However, the ability of various governments to deal with vessels that are moored or anchored on sea, lake or river bed owned by the Provincial crown without authorization will depend on the specific facts of any situation.

If a vessel operator is exercising their public right of navigation – a right which includes a right to anchor for reasonable periods for purposes such as repair, overnighting or provisioning the vessel – neither the Province nor local governments have a power to remove or order the removal of the vessel.

Where vessels are anchored for longer periods the Province, and in some cases local governments, may take action, but this will depend on the specific facts of the situation. For example, if a vessel is moored on Provincial Crown Land without any authorization for long periods, under the *Land Act* the Province may be able to seize and sell or destroy the vessel. In some cases, the Province may seek a court order prior to seizing/removing a vessel, or imposing a monetary penalty for trespass because of contraventions of provincial legislation such as the *Land Act*.

In one recent case, the courts considered a situation where a provincially-owned lake bed was zoned by local government to allow only temporary boat moorage for upland owners. Despite the zoning bylaw the court recognized that temporary moorage for a boat owner who was not an upland owner, where such moorage was related to the active recreational use of his vessel, could not be restricted by the local government. However, long term moorage could be restricted under the bylaw.

Both local government and the Province have greater authority to deal with structures that are neither vessel nor wreck and are moored on or attached to a sea, lake or river bed owned by the Province. The Province has clear authority to remove or destroy such structures. In some cases, local government regulations related to zoning and nuisance may also apply to floating structures in the same manner as they would to dry land structures – although only a limited number of local governments currently have zoning bylaws pertaining to foreshore and water lots.

Where a vessel or other structure is a person's sole residence, special considerations arise. Seizure of a vessel that is a person's dwelling may be contrary to the *Canadian Charter of Rights and Freedoms* if it would deprive that person of shelter against the elements and endanger that person's well-being. Such situations often require an interagency approach that considers the social and human dimensions of the issue. Depending on the circumstances it may be necessary to involve agencies such as the RCMP, health authorities or social service providers.

Where an enforcement action affects a person's property or interests, authorities may have a duty of fairness to notify affected persons of any actions to be taken and give them an opportunity to be heard. Where the Province uses its powers under the *Land Act* to seize a vessel or structure it is required to give notice to the owner, if the owner is known, or post a public notice. Typically, the Province provides sufficient notice (usually 30 days) to allow the owner to respond before the property is seized.

Other situations

Beyond the ability of the Province to deal with vessels or structures that are in trespass on Crown land, there are many other situations where the Province or federal government may be able to take action or authorize others to take action. This includes situations involving structures or vessels that are sources of pollution, interfere with navigation, are wrecks or are sunk, grounded or abandoned. Structures or vessels that pose an environmental threat are a high priority for both Provincial and Federal levels of government and vessels that interfere with navigation are a priority for Transport Canada.

Pollution

For ship-source spills of oil or other noxious substances into the marine environment, the Canadian Coast Guard is generally the lead agency, while the Province's Ministry of Environment is generally the lead agency for spills or emissions of waste from structures. In some situations the province may take a role in relation to vessels – for instance issuing pollution abatement orders. Regulations under the *Canada Shipping Act* regulate emissions from vessels, including requirements for holding tanks and discharge of sewage.

The Province also operates a central reporting system for spills, environmental emergencies and pollution problems. The *Environmental Management Act* prohibits discharges that cause pollution and regulations under it and the *Public Health Act* regulate the discharge of sewage.



Impediments to navigation

The federal *Navigation Protection Act* authorizes federal officials to remove or order the removal of vessels or structures that are obstructing navigation. Obstructions to navigation can be reported to Transport Canada's Navigation Protection Program (NPP) during regular business hours. The complaint will be assigned to a NPP officer for follow up. The *Navigation Protection Act*¹ applies to most waters used by boaters in British Columbia, including all tidal waters other than waters designated by the federal government as being "Minor Waters."

.....
1 <http://laws-lois.justice.gc.ca/eng/acts/N-22/>



Sunk, grounded or abandoned vessels

A “wreck” may be treated in one of two ways: as an obstruction to navigation under the *Navigation Protection Act*, or as a wreck under the Receiver of Wreck provisions of the *Canada Shipping Act, 2001*.

Under the *Navigation Protection Act*, if any vessel is sunk, partially sunk, lying ashore, grounded or abandoned in navigable waters, Transport Canada may authorize any person to remove the vessel or parts of it for their own benefit. The person authorized to remove the vessel is required to provide registered and other owners with a 30 day notice. This provision provides a mechanism by which Transport Canada can authorize local governments, the Province or other persons to take possession of grounded, sunk or abandoned vessels.

Transport Canada may take immediate steps to remove structures or vessels or direct others to remove structures or vessels that are causing serious and imminent danger to navigation or are interfering with use of federal Crown lands.



Receiver of Wreck

Under the *Canada Shipping Act, 2001* a person who finds and takes possession of a wreck, the owner of which is unknown, is required as soon as feasible to report to the Receiver of Wreck and take actions directed by the Receiver. The Receiver of Wreck is a Transport Canada official within the Navigation Protection Program.

The key role of the Receiver of Wreck is to try to locate the owner and return their property, or dispose of a salvaged wreck(s) by various means (i.e. sell, give away, destroy, etc.) if the owner cannot be located in a reasonable time period. The Receiver of Wreck does not salvage wrecks.

Anyone other than the owner taking possession of a wreck(s) (i.e. salvaging) must notify the local Receiver of Wreck and may be entitled to a reasonable salvage award paid by the owner or from the proceeds of selling the wreck. If the owner is known there is no role for the Receiver of Wreck. Where the wreck is of limited value, the salvage reward may be limited to ownership of the wreck itself.

When the owner of a wreck cannot be found, the Receiver may authorize the removal or destruction of a wreck valued less than \$5000 at any time. When the wreck is valued at more than \$5000, the receiver must generally wait 90 days before allowing the destruction or sale of the wreck. A wreck valued at more than \$5000 is typically claimed by the registered owner or the owner's insurance company. The Receiver may also authorize the destruction or sale of a wreck where an owner abandons all interest in the vessel.

The *Canada Shipping Act, 2001*, provides a mechanism by which the Receiver of Wreck can authorize local governments, the Province or other persons to remove or destroy a wreck in cases where the owner is unknown.

Who to contact

Is the concern about a vessel or structure obstructing navigation?	Contact Transport Canada at 604-775-8867 or pacnpp-ppnpac@tc.gc.ca
Is the concern about leaking harmful substances (i.e. oil)?	Contact BC Provincial Emergency Program at 1-800-663-3456
Is the concern about sewage discharge?	Contact BC Provincial Emergency Program at 1-800-663-3456
Is the concern about other types of pollution?	Contact BC Provincial Emergency Program at 1-800-663-3456
Is the concern about objects that were once part of a wrecked or stranded vessel and you want to salvage the items?	Contact the Receiver of Wreck at 604-775-8867 at pacnpp-ppnpac@tc.gc.ca
Is the concern about objects from a wrecked or problem vessel causing a public safety concern?	If there is an imminent concern regarding public safety contact the Joint Rescue Coordination Centre Victoria at 1-800-567-5111 (toll free), #727 (cellular); 250-413-8933 (satellite, local or out of toll free area), or jrccvictoria@sarnet.dnd.ca . If the concern is not imminent contact the Receiver of Wreck at 604-775-8867 or pacnpp-ppnpac@tc.gc.ca
Is the concern about a problem structure anchored or grounded on Crown land?	Contact BC Ministry of Forests, Lands and Natural Resource Operations at 250-387-1772 and ask for regional office
Is the concern about a vessel anchored or moored for extended period on aquatic land owned by the Province?	Contact BC Ministry of Forests, Lands and Natural Resource Operations at 250-387-1772 and ask for regional office
Is the problem related to local government by laws (i.e. noise or, residential or commercial use)?	Contact the local government
Is the concern about leaking harmful substances (i.e. oil)?	Contact BC Provincial Emergency Program at 1-800-663-3456
Is the concern about sewage discharge?	Contact BC Provincial Emergency Program at 1-800-663-3456
Is the concern about other types of pollution?	Contact BC Provincial Emergency Program at 1-800-663-3456



Ministry of
Forests, Lands and
Natural Resource Operations