

San Francisco Bay Conservation and Development Commission

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September 9, 2019

TO: Enforcement Committee

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SUBJECT: **Briefing on the Management and Abatement of Abandoned and Derelict Vessels
– Authorities, Programs and Challenges
(For Committee consideration on September 12, 2019, Agenda Item 7)**

Briefing Summary

In preparation for the discussion of abandoned and derelict vessels at the September 12th Enforcement Committee meeting, this staff report summarizes: (1) the programs and authorities that are in place to enable abatement of abandoned and derelict vessels; (2) funding sources for vessel abatement; (3) the prior briefings the Commission has received regarding abandoned and derelict vessels; and (4) the briefings the Committee will receive on September 12th.

Overview of Abandoned and Derelict Vessel Authorities and Programs

According to the California State Lands Commission, California has one of the largest boating populations in the United States, with over 772,000 registered recreational vessels. With this large number of boats, abandoned vessels are a significant problem. Recreational vessels constitute the majority of abandoned and derelict vessels, but abandoned commercial vessels, which are typically larger, can cost significantly more money to remove.

The California Legislature has created a number of programs that authorize the removal and disposal of abandoned and derelict vessels and marine debris. Section 522 of the Harbors and Navigation Code (HNC) allows municipal corporations to take title to abandoned or derelict or unseaworthy vessels and cause them to be sold, destroyed or disposed of, provided that notice is given in accordance with the statutory provisions and the vessel is not claimed. Sections 523 of the HNC authorizes a county, city, or district peace officer to remove any vessel from a public waterway or private property, and, if necessary, store it, under certain delineated circumstances, including when the vessel interferes with, or otherwise poses a danger to, navigation or the public health, safety, or welfare, or when the vessel is left unattended and is in a position that obstructs normal movement of traffic or creates a hazard to other vessels or public safety or property. This section also allows for recovery of the costs of vessel removal through an action in court. Section 526 of the HNC sets forth the process to be used for selling or otherwise disposing of an unseaworthy or derelict vessel that has been abandoned or removed from a navigable waterway.



In 2011, as boat owners were abandoning both recreational and commercial vessels in increasing numbers during the economic recession, the Legislature added provisions to the Public Resources Code to expedite and streamline the process for the State Lands Commission (SLC) to remove and dispose of abandoned and trespassing vessels and unpermitted ground tackle. Previously, in order to dispose of a vessel, the SLC was required to obtain title to a vessel through court action. The provisions that the Legislature added in sections 6302.1 through 6302.4 of the Public Resources Code set forth an administrative process that the SLC can use to remove an abandoned vessel, take title to it, and dispose of it. These provisions allow the SLC to recover all costs incurred in a removal action through a court action or the use of any available administrative remedy. The provisions also include a notice requirement and allow for a vessel owner to recover a vessel after reimbursing the costs of removal and storage.

In 2015, the Legislature also added additional marine debris authorities to the Harbors and Navigation Code, providing an expedited process and legal authority to any state, county, city or other public agency having jurisdiction over its location to identify and remove derelict or dilapidated vessels. These new provisions, in sections 550 through 552 of the HNC, authorize state and local agencies and law enforcement to remove marine debris using an expedited process that includes attachment of a notice and opportunity for a vessel to be claimed within 10 days. Section 550 of the HNC defines “marine debris” to include vessels that are unseaworthy and not reasonably fit or capable of being made fit to be used as a means of transportation by water. The provisions further authorize a public agency to recover the costs incurred in removal and disposal of marine debris from an owner or entity who placed the vessel on public lands or waterways through an action in court or by administrative action.

The authority of federal agencies to remove or dispose of a vessel abandoned or wrecked in California waters is restricted only to certain situations. The U.S. Coast Guard can respond to vessels spilling or threatening to spill oil or hazardous substances. However, once the pollution threat has been removed, the Coast Guard will typically cease involvement, although, on occasion, it may take a vessel to a nearby port or shipyard for disposal. The U.S. Army Corps of Engineers will only remove a vessel if it is a threat to a major navigation channel or is within their authority zone around a dam or other federal infrastructure.

Funding Sources

The State Department of Parks and Recreation, Division of Boating and Waterways (DBW) administers the Surrendered and Abandoned Vessel Exchange (SAVE) grant program which was established by statute to facilitate removal of abandoned vessels and reduce and prevent abandoned recreational vessels and marine debris from accumulating on the waterways and in marinas. Abandoned Watercraft Abatement Fund (AWAF) grants, which are part of the SAVE program, are awarded annually to qualified local public agencies statewide for the abatement, removal, storage and disposal of abandoned, wrecked, or partially submerged vessels. By statute, these grants may not be used for abatement of commercial vessels.

The SAVE program also includes the Vessel Turn-In Program (VTIP) grant program, which supports programs administered by participating local agencies to accept and dispose of vessels surrendered by owners, free of charge to the owner. Combining these two separate grant programs (AWAF and VTIP) into a single program (SAVE) allows local public agencies the convenience of applying for and managing only one grant, along with the flexibility to use the funds for both purposes as needed. The AWAF and VTIP, enacted in 1998 and 2010 respectively, have provided millions of dollars in grants, and have enabled the removal of thousands of vessels and marine debris. Eight of the nine Bay Area counties, excepting Santa Clara County, participate in the SAVE grant program. More information about the SAVE program can be accessed at: http://dbw.parks.ca.gov/?page_id=28816.

The National Oceanic and Atmospheric Administration (NOAA) also administers a Marine Debris Program which awards grants for marine debris removal projects that benefit coastal habitat, waterways, and NOAA trust resources. Priority activities for grant awards include abandoned and derelict vessel removal and associated vessel debris removal activities, and the funds are available for removal of both recreational and commercial vessels. Applicants must meet a matching requirement unless they can meet certain criteria.

In general, the limited availability of funding for commercial vessel abatement and limited authorities of the federal agencies have hampered the ability of entities throughout California to address abandoned commercial vessels. There are several instances throughout the state, including an example from 2017 at Cayucos State Beach, San Luis Obispo County, where commercial vessels have run aground and the U.S. Coast Guard responded and removed oil and other substances and then departed. With an uninsured and unreachable owner, and limited funding for commercial vessel abatement, the local governments and State Lands Commission are left with the authority to remove the vessel, but no source of funding to do so. The vessel that ran aground at Cayucos State Beach in 2017, the *Point Estero*, remained in place as of early 2019.

Prior BCDC Commission Briefings and the Upcoming September 12 Enforcement Committee Briefing

On March 21, 2013, the Commission received a briefing on Abandoned Vessels and Marine Debris in the Bay. The briefing provided an overview of Bay-wide issues, described the opportunities and challenges in managing abandoned vessels, and included presentations by representatives of the Division of Boating and Waterways, the Contra Costa County Sheriff's Office, the California Department of Resources, Recycling and Recovery (CalRecycle), and the Richardson's Bay Regional Agency. The materials from this meeting are at: <https://www.bcdc.ca.gov/cm/2013/03-21Agenda.html>

On February 20, 2014, the Commission received a second briefing on the involved in abating abandoned and derelict vessels. At this briefing, a representative from CalRecycle and a representative from the U.S. Environmental Protection Agency provided an overview of a 2013-2014 interagency clean-up that was undertaken in the Oakland-Alameda Estuary. The materials from this meeting are at: <https://www.bcdc.ca.gov/cm/2014/0220Agenda.html>



On June 21, 2018, the Commission received a briefing from the California Regional Coordinator for the NOAA Marine Debris Program on NOAA's annual marine debris removal grant funding opportunity, which can be used to fund locally driven, community-based marine debris removal projects to benefit coastal habitat, waterways, and wildlife, including anadromous fish. Information on this program, which provides funding for varying marine debris removal efforts, including removal of abandoned and derelict recreational and commercial vessels, can be accessed at: <https://marinedebris.noaa.gov/funding/funding-opportunities>. The materials from this meeting are at: <https://www.bcdc.ca.gov/cm/2018/0621NOAADebrisMarin.pdf>

On November 1, 2018, the Commission received a briefing on trends of the boating industry and marina operations from Josh Burnam, Chair of the Bay Planning Coalition's Marinas and Boatyards Committee. The materials from this meeting are at:

<https://www.bcdc.ca.gov/cm/2018/1101Recreationalboating.pdf>

On September 12, 2019, Chief Petty Officer Jeremy Thomas, U.S. Coast Guard, will brief the Committee on the federal authority to respond to vessels spilling or threatening to spill oil or hazardous substances or impacting or threatening to impact navigation.

Andrew Kershen, an attorney for the State Lands Commission, will brief the Committee on SLC-sponsored initiatives to improve vessel abatement and secure funding for abatement efforts. Mr. Kershen will discuss the SLC's "Abandoned Commercial Vessel Removal Plan, Sacramento – San Joaquin River Delta Region." The July 1, 2019 report that the SLC presented to the Legislature on this program can be accessed at: <https://www.slc.ca.gov/wp-content/uploads/2019/06/AB2441-Plan-final-062819.pdf>. Mr. Kershen will also discuss SLC's efforts to abate three commercial vessels, one from the Crockett shoreline and two from Richmond, all in Contra Costa County.

Officer Kaleo Ablino, of the Oakland Police Department, Maine Patrol, will brief the Committee on his continuing efforts to manage the constant influx of vessels into the Oakland Alameda Estuary, Alameda County. Sarah Herbelin, Boating Recreation Supervisor, Oakland Parks, Recreation and Youth Development, Lake Merritt Boating Center/Jack London Aquatic Center, will brief the Committee on the adverse impacts the presence of these derelict and unseaworthy vessels is having on the City's facilities, recreational activities and user population.