

MAINE STATE LEGISLATURE

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**Study of the Problem of
Submerged Watercraft
in Coastal Waters
of Maine**

**Prepared by
DEPARTMENT OF CONSERVATION
Bureau of Public Lands**

JANUARY, 1988

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I. SUMMARY

This report is submitted in accordance with L.D. 1795, "Resolve, Requiring the Department of Conservation to Study the Problem of Submerged Watercraft in Coastal Waters of the State" as enacted by the 113th Legislature.

As directed in the Resolve, the Department of Conservation, Bureau of Public Lands, consulted with the organizations listed in the resolve, soliciting their advice on the subject of submerged watercraft. In addition, those organizations had the opportunity to review and comment on the report.

Upon reviewing the list of submerged watercraft compiled from information submitted by municipalities, the problem appears to be localized rather than extensive. Both State and Federal agencies have some authority to require removal in certain situations. In the majority of cases, the vessels do not represent a hazard to navigation and therefore Federal involvement will be limited. While the Bureau of Public Lands and the Department of Environmental Protection seemingly have authority to deal with the problem, specific clarification would be helpful. With many of the vessels having been submerged for years, it is unlikely that responsible parties can be identified and required to fund the cost of removal in all cases. Establishment of an appropriate funding mechanism is essential if vessels identified as a problem are to be removed.

If the Legislature determines the problem of submerged vessels is significant and warrants further attention, L.D. 1795 should be extended for one additional year with funds

appropriated to identify those vessels to be dealt with, attempt to identify responsible parties and enter into an agreement with a marine contractor to provide estimates for the cost of removal. These efforts will make it possible to establish an accurate cost for removing submerged vessels identified as a problem along Maine's coast. It is estimated such a study could be done for \$10,000 for one year.

II. INTRODUCTION

Maine's extensive coastline and long history of maritime activities have over the years resulted in an accumulation of submerged watercraft along the coast. While a limited number of these vessels may represent a hazard to navigation, others may be of historic value.

Difficulties in effectively dealing with the removal of such vessels in Cundy's Harbor led to a Resolve, which was passed by the 113th Legislature, directing the Department of Conservation to study the problem (Appendix A). As directed by L.D. 1795 "Resolve, Requiring the Department of Conservation to Study the Problem of Submerged Watercraft in Coastal Waters of the State", this study attempts to define the problem, present background information, identify unanswered questions and propose a course of action.

In an effort to define the magnitude of the problem all 120 coastal towns received a request during the summer of 1987 to identify the submerged vessels within their jurisdiction which are considered a problem and that they would like to see removed (Appendix B). After organizing the information provided in response to this request, individual meetings were held by Bureau of Public Lands staff with the U.S. Coast Guard, U.S. Army Corps of Engineers, the Maine State Departments of Marine Resources and Transportation to discuss the problem both in general and specifically in regard to information provided by towns.

The information gathered through this process is presented in the following section.

III. DISCUSSION

1. Magnitude of Problem

In an attempt to get an accurate picture of the magnitude of the problem, coastal towns were identified from a mailing list provided by the Maine Municipal Association. The 120 towns identified as coastal received a letter requesting information on submerged vessels within their jurisdiction.

The results from this request are presented below:

<u>Town</u>	<u># Vessels</u>	<u>Type</u>	<u>Location</u>
Kittery	1	WOODEN BARGE (100'x15')	Spinney Creek
Georgetown	2(?)	5-MASTED SCHOONER (240')	Robinhood Cove
		Several (15'x40') OLD LOBSTER BOATS	Gott's Cove
Yarmouth	2	(40'+)	Between Cornfield Pt. & Cousin's Is.
Phippsburg	1	WOODEN DRAGGER (78')	Malaga Island
Harpswell	5	2 STEEL TRAWLERS (110')	Ridley Cove Cundy's Harbor
		1 WOODEN TRAWLER (60')	
		2 5000 GAL. GAS TANKS	
TOTAL	5 TOWNS	APPROXIMATELY 11 VESSELS	2 STEEL TRAWLERS 2 STEEL TANKS 7 WOODEN VESSELS

There are a number of points of interest relative to this information. The types of vessels and in some cases structures vary considerable from a 240' wood schooner to 5000 gallon gas tanks. More importantly, the response seems quite limited. This information represents those vessels considered a problem by town.

officials. It does not represent the number of submerged or abandoned vessels visible along the coast, the majority of which do not constitute a hazard to navigation.

If the committee concludes the problem of submerged vessels is serious and warrants further study they should determine the scope and appropriate funding of any future effort.

2. Responsible Agencies

Individual meetings were held with the four government agencies identified in the Resolve. Any proposed solutions must take into account specific agency authority and jurisdiction as well as the concerns raised by these agencies.

FEDERAL

INVOLVEMENT/JURISDICTION/AUTHORITY

U.S. COAST GUARD -- The Commander of the Coast Guard Station in Portland is the Federal Captain of Port for the entire Maine coast. As such, he has the responsibility to see that Maine ports are open for safe navigation. The Coast Guard would become involved in the removal of a submerged vessel if such a vessel presented a hazard to navigation or represented a potential pollution problem. There is a distinct difference between a hazard to navigation and an inconvenience to navigation. A vessel which lays in a channel into a harbor would be considered a hazard to navigation. A vessel in some portion of the harbor other than the channel may not represent a hazard to navigation as seen by the Coast Guard. Once the Coast Guard determines a submerged vessel represents a hazard to navigation, they broadcast a notice to mariners and mark the vessel with a buoy.

If warranted, they contact the Army Corps of Engineers for a determination as to whether the vessel needs to be removed.

If a vessel is to be disposed of at sea the Coast Guard recommends this be done beyond the three mile limit. There is an existing dump site between 20-30 miles off shore. Disposal at this site would require an ocean dumping permit from E.P.A. If the State starts to remove a vessel, it will be assuming some liability if the vessel sinks in a channel or creates other problems.

When submerged vessels create a hazard to navigation or represent a potential pollution problem, there is clearly a role for the Coast Guard. This is not the case, however with the majority of the submerged vessels identified to date as a problem. Therefore, the State should assume the Coast Guard will not play a significant role in removing these submerged vessels.

U.S. ARMY CORPS OF ENGINEERS -- The Corps' of Engineers, Operations Division's authority relates to removing obstructions which are a navigational problem in federal channels and areas traversed by the general public (Appendix C). From a practical standpoint this encompasses the waters of concern in this study. The Corps has no authority to deal with vessels that are only an eye sore. This appears to be the case also with the other agencies involved. The Corps' experience is generally with vessels that have recently sunk and can be refloated.

Technical expertise from both the Corps and the Coast Guard would be useful in any removal program. Efforts should be made

to obtain their assistance in any proposed actions. Beyond this it is unlikely either federal agencies will play a major role in such a program unless the vessel involved truly represents a hazard to navigation. And, in fact, the current trend with the Army Corps is for a reduced role in local activities, shifting more responsibility to the State level.

STATE OF MAINE

INVOLVEMENT/JURISDICTION/AUTHORITY

DEPARTMENT OF TRANSPORTATION -- Within the Department of Transportation, the Ports and Marine Transportation Division has certain responsibilities in regard to Maine Ports. Their primary responsibility centers around proper development of ports and harbors, including provisions for adequate and safe navigation. Proper use of harbor space is also a concern. Within this division there are marine engineers and vessels which could possibly be useful in a vessel removal program. The Bridge Maintenance Division also has some equipment, personnel and expertise that could conceivably be useful in such a program. DOT indicated that this Division has a full workload with their regular responsibilities, and additional work would probably require additional staff, as well as reimbursement from any future vessel removal program.

Beyond their general charge to develop State ports and harbors in regard to transportation needs, DOT has no specific authority to deal with the removal of problem submerged vessels. The cost of employing DOT personnel and equipment to remove such vessels would probably be comparable to using independent

contractors who may have more expertise in the specific area of submerged vessel removal. Additional work is necessary to identify the logistical problems and actual costs of removing specific vessels. DOT would like to see the problem addressed and the roles of State agencies clarified.

DEPARTMENT OF MARINE RESOURCES -- The Department of Marine Resources has a law enforcement presence along the coast in the form of the Marine Patrol and this agency might be useful in an effort to identify the location of vessels that should be removed. As has been mentioned with other agencies, this agency already has a full workload and any significant involvement in a vessel removal program would be difficult.

The Department did express serious concerns about the potential environmental impact of moving submerged vessels. Many of the vessels involved have been submerged for a considerable length of time and have settled into the bottom. Removal efforts could result in a significant amount of siltation, floating debris and disturbance to the bottom. They want to be involved in any removal program to the extent they are given the opportunity to look at each vessel and site, and make recommendations for control of potential impacts, or non-removal. This brings up an important point. Each case will have to be assessed individually to determine the potential problems associated with removal as well as the costs involved.

DEPARTMENT OF ENVIRONMENTAL PROTECTION -- Although DEP was not listed in the Resolve, it's potential involvement warrants some discussion.

Intentional abandonment of a vessel along the coast is potentially a violation of a number of DEP laws. DEP regulations define such acts as depositing fill on a wetland and this is prohibited under the Alteration of Coastal Wetlands Law (M.R.S.A. Title 38 Article 5). As defined in the Wetlands Act, wetlands are all tidal and sub-tidal lands including all areas below any identifiable debris line left by tidal action. Such an act may also violate certain solid waste management rules like the "Three Hundred Foot Law" which prohibits disposal of solid waste closer than 300 feet to any classified body of water. In addition, this type of activity may require a Waste Discharge License under subsection 413 of Title 38, Chapter 3 Protection and Improvement of Waters.

While the above statutes and regulations provide DEP with considerable authority to get involved with and require the removal of a submerged vessel there remain a number of problems from a practical standpoint. Many of these vessels have been submerged for a number of years and identifying the owner or responsible party will be difficult, if not impossible. If these vessels had any significant value, they would have been salvaged. It can be assumed therefore that salvage value will not play a significant role in reducing the cost of removal. If the responsible party cannot be identified and required to pay for the cost of removal, a funding mechanism is necessary since DEP does not currently have a fund to deal with this problem. And from a priority standpoint these vessels may not warrant attention when compared to the myriad of environmental problems

facing the DEP. DEP authority may be helpful when the vessels involved are located in the intertidal zone, an area not owned by the State.

DEPARTMENT OF CONSERVATION -- Within the Department of Conservation, the Bureau of Public Lands has management responsibility for State-owned submerged and intertidal lands. These consist of all land between the mean low water mark and the three mile territorial boundary, including the beds of tidal rivers to the farthest natural reaches of the tidal. As a result of the Submerged Lands Act (Title 12 M.R.S.A. Sub-Section 558-A) the Bureau is authorized to grant leases or easements for dredging, filling, erection of permanent structures and installation of fixtures such as cables and pipelines on intertidal and submerged lands owned by the State. The State holds in trust these resources for the benefit of the public, and the public uses thereof generally include fishing, fowling, and navigation. Submerged vessels located below the mean low water line constitute a permanent structure, and therefore require such a conveyance to legally occupy the area. Vessels located in the intertidal area represent a different problem since the State does not have fee simple ownership in this area. In this situation, the State's responsibility to protect the public trust rights provides the Bureau or the Attorney General's Office with some debatable but uncertain authority to pursue responsible parties and require removal. ✓

While the Bureau may be an appropriate agency to coordinate a submerged vessel removal program, since the vessels are either

on State-owned land or on land where public trust rights exist, it faces problems similar to those previously stated for the other State agencies involved. Currently the Submerged Lands Program has a staff of two and is funded solely through lease revenue. Neither staff nor funding are available to deal with even a modest vessel removal program.

IV. CONCLUSION AND RECOMMENDATION

The problem of submerged vessels along the coast of Maine appears to be localized rather than extensive. It is unlikely that local governments will be able to effect the removal of vessels identified as a problem without help due to the costs involved. In the majority of cases Federal agencies will only provide technical expertise and direction at best, and they should not be looked to for financial assistance. Within the State DOT should play an advisory role due to its responsibilities in port and harbor management where vessels affect these areas. DMR should play a direct role in reviewing each case to make a recommendation on potential environmental problems associated with vessel removal. Where Public Lands' lacks the authority to effectively deal with certain cases, DEP's authority and involvement should be employed.

The Department of Conservation, through the Bureau of Public Lands, should be the lead agency in coordinating and administering any future submerged vessel removal program. In this regard there remains some fundamental questions that need to be answered.

... Should additional efforts be made to expand upon the list of problem submerged vessels generated from the Town's responses to this summer's questionnaire?

... How much will it cost to remove the vessels considered to be a problem?

... How will this program be funded?

There is complete agreement that when possible the owner or responsible party should be identified and required to pay for the cost of removal. However, this will be difficult, if not impossible, in the case of vessels which have been submerged for many years. Even in the relatively recent situation in Cundy's Harbor, it has not been possible to clearly identify and appropriate funds from the responsible parties to carry out a removal effort. So while any removal program should attempt to identify the owner or responsible party and require reimbursement for removal costs, an alternative funding mechanism will be necessary in order to deal with many cases.

While establishment of an accurate cost to remove problem vessels was beyond the scope of this study, it is known from discussions the cost will be significant. The legislature should consider the availability of funds for a vessel removal program if further action is contemplated.

Once the list of vessels to be dealt with has been identified, a marine contractor can be hired to establish the cost of removal. The cost to remove individual vessels will vary greatly depending on the location, condition and disposal method. Each case will require an individual estimate in order to

establish program cost with any degree of accuracy. Program costs will be reduced when responsible parties can be identified and required to cover expenses.

The number of future problems should be reduced by a provision of the Harbor Master law passed last year. Section 9 deals specifically with the "Abandonment of Watercraft". This sections gives municipalities the authority to consider whether a vessel should be allowed into a harbor by requiring a local permit to do so. Whoever does so without a permit is guilty of a Class E crime. Consideration could be given to additional changes in existing law which will prevent uncontrolled disposal of such vessels in the future. ✓

If the Committee of State and Local Government wishes to have the Department of Conservation continue to study the problem of submerged vessels and develop a program whereby such vessels will ultimately be removed, L.D. 1795 should be extended for one additional year with a \$10,000 appropriation. These funds would be used to further evaluate the extent of the problem, attempt to identify responsible parties and enter into an agreement with a marine contractor to provide estimates for the cost of removing specific vessels. After such additional work is completed it will be possible to establish an accurate cost for removing submerged vessels identified as a problem along Maine's coast.

V. APPENDICES

- Appendix A -- Resolve, Requiring the Department of Conservation to Study the Problem of Submerged Watercraft in Coastal Waters of the State.
- Appendix B -- July 30, 1987 letter to Municipalities.
- Appendix C -- Extracts from the Act of Congress approved March 3, 1899 on sunken vessels.

JUN 24 '87

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BY GOVERNOR

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

H.P. 1316 - L.D. 1795

Resolve, Requiring the Department of
Conservation to Study the Problem of
Submerged Watercraft in Coastal
Waters of the State.

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there are numerous sunken, abandoned watercraft in the coastal waters of the State; and

Whereas, many of these watercraft create visual blight, a hazard to navigation and a source of water pollution; and

Whereas, in considering a bill concerning this subject the Joint Standing Committee on State and Local Government was unable to determine the scope of the problem or identify a responsible governmental agency; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Department of Conservation to conduct study. Resolved. That the Commissioner of Conservation shall study the subject of sunken vessels in the coastal waters of the State and shall make a report of his

findings with any necessary legislation to the Joint Standing Committee on State and Local Government by February 1, 1988.

The commissioner shall consult with and seek the advice of the Department of Marine Resources, the Department of Transportation, the United States Coast Guard and the United States Army Corps of Engineers.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

APPENDIX B

July 30, 1987

Dear Sir/Madam:

During the first regular session of the 113th Legislature, a resolve was passed "Requiring the Department of Conservation to Study the Problem of Submerged Watercraft in Coastal Waters of the State". The resolve directs the Department to study the subject of sunken vessels and make a report of its findings with any necessary legislation to the Joint Standing Committee on State and Local Government by February 1, 1988.

The first step in this process is to determine the extent of the problem. I am, therefore, requesting your assistance to identify the submerged vessels within your jurisdiction which are considered a problem and that the town would like to see remove. Many of these vessels are either partially submerged or exposed at low tide. Information on the location, size, material, age and length of time submerged would be very helpful.

Once this information has been provided, efforts to assess the magnitude of the problem, identify responsible parties and develop solutions can proceed. With the final report to the Legislature due February 1 time is a factor. Please respond with the requested information by September 11th if your town has submerged vessels which you wish to have removed. This request is being sent to Town Managers or 1st Selectmen. If another individual, such as a Harbor Master, could better respond to this request please forward this letter.

If you have any questions concerning this request, do not hesitate to call me at 289-3061. Your efforts in this matter will be appreciated.

Sincerely,



THOMAS MORRISON
Resource Administrator
Bureau of Public Lands

TM/reb

APPENDIX C

(EXTRACTS FROM THE ACT OF CONGRESS APPROVED MARCH 3, 1899)

"Sec. 409. Obstruction of Navigable waters by vessels;
floating timber; marking and removal of
sunken vessels

"It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as "sack rafts of timber and logs" in streams or channels actually navigated by steamboats in such a manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner to do so shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as provided for in sections 411-416, 418 and 402 of this title. March 3, 1899, c. 425, Sec. 15, 30 Stat. 1152."

"Sec. 414. Removal by Secretary of the Army of
sunken water craft generally

"Whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water craft, raft of other similar obstruction, and such obstruction has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold, or otherwise disposed of by the Secretary of the Army at his discretion, without liability for any damage to the owners of the same: Provided, That in his discretion, the Secretary of the Army may cause reasonable notice of such obstruction of not less than thirty days, unless the legal abandonment of the obstruction can be established in a less time, to be given by publication, addressed "To whom it may concern" in a newspaper published nearest to the locality of the obstruction, requiring the removal thereof; And provided also, That the Secretary of the Army may, in his discretion, at or after the time of giving such notice, cause sealed proposals to be solicited by public advertisement, giving reasonable notice of not less than ten days, for the removal of such obstruction as soon as possible after the expiration of the above specified thirty days' notice, in case it has not in the meantime been so removed, these proposals

(EXTRACTS FROM THE ACT OF CONGRESS APPROVED MARCH 3, 1899)

and contracts, at his discretion to be conditioned that such vessel, boat, water craft, raft or other obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: Provided, That such bidder shall give satisfactory security to execute the work: Provided further, That any money received from the sale of any such wreck, or from any contractor for the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States. Mar. 3, 1899, c. 425, Sec. 19, 30 Stat. 1154."