

CHAPTER 4 - REMOVAL OF WRECKS AND OTHER OBSTRUCTIONS

4-1. Purpose. This chapter establishes guidance on removing wrecks and other obstructions to navigation on waterways under the jurisdiction of the USACE.

4-2. Applicability. This chapter applies to all USACE commands having responsibility for civil works navigation functions and the removal of sunken vessels within the navigable waters of the United States. Wrecks which predate the Water Resources Development Act of 1986 (PL 99-662) are subject to the same policy, except where specifically noted otherwise. This chapter does not apply to obstructions other than vessels, which may be subject to removal under other statutory authorities and procedures.

4-3. Background.

a. Over the years, several significant court cases have circumscribed the scope of the law by defining "navigable channel," "abandonment," the owner's duty to mark/remove, the Corps' duty to protect navigation, and legal liability generally. The U.S. Code (Annotated) provides citations and summaries of several key cases for further reference. The agency's nationwide policies take the overall case history into consideration, but are not bound by the results of every individual case.

b. Coordination problems between the Corps of Engineers and the U.S. Coast Guard were highlighted by the National Transportation Safety Board (NTSB) in its 1978 report on the M/V DAUNTLESS COLOCOTRONIS Grounding. The NTSB recommended coordination between the Corps and the Coast Guard in better defining what constitutes a hazard to navigation, and periodic reviews (with the Coast Guard) of existing hazards to navigation. In October 1985, the Corps and the Coast Guard signed a Memorandum of Agreement to address these issues.

c. Funding priorities require us to take a conservative approach with respect to the removal of wrecks and other obstructions in our role of protecting and preserving navigable waters. Because of funding restraints, an administrative decision was made that for the general case, the geographic limit for the exercise of our authority need not be extended to cover the entire navigable river bed.

d. Enforcement Problems. One of the levers for effective enforcement is the ability to remove the wreck under Federal authority and then recover costs from the responsible party. In the past, the Corps' ability to enforce removal by the owner was seriously constrained by the requirement to prove negligence (in the sinking) and, sometimes, by difficulty in tracing a financially-viable owner. The Water Resources Development Act of 1986 (PL 99-662) eliminated the prerequisite of negligence and extended financial liability to vessel operators and lessees for wrecks occurring after November 17, 1986.

e. Insufficient cost controls have often limited our ability to recover Federal costs in removal. Challenges to the "reasonableness" of our expenditures can usually be traced to either excessive use of resources (where the cost really isn't reasonable) or inadequate documentation and accounting (where the costs are reasonable but we don't justify them well).

4-4. Guidance.

a. Hazard determination. Generally, anything that restricts or obstructs general navigation within a defined channel, or creates a similar restriction in a fairway, or has reasonably high potential for moving into any area of general navigation, can be considered a hazard to navigation. Other situations are considered on a case-by-case basis, where a hazard is defined in terms of specially significant factors. The determination is a judgment call by the District Commander, coordinated with the Coast Guard district.

(1) Those obstructions which affect only private wharves or canals (i.e., public access is restricted) do not fall within the scope of restricting "general navigation," and will not ordinarily be removed by the Corps. Similarly, wrecks alongside commercial docks, or obstructing local access channels to such docks, will not ordinarily justify the expenditure of Federal funds for removal.

(2) Obstructions which present only a minor inconvenience to marine traffic (e.g., outside the main channel, limiting the number of places where large tows can leave the channel for passing, but where nearby alternatives exist) will not ordinarily be removed.

(3) Obstructions which have a high potential for moving should be given special consideration, since any unexpected movement could create a special hazard to mariners.

(4) Where timeliness is not a critical factor, a court judgment to compel removal is the preferred first course of action before undertaking Corps removal. Before seeking a judgment, however, some attempt should be made to determine if the owner is likely to have the financial means to undertake removal.

b. Requests for HQUSACE approval (where contract costs for removal are estimated to exceed \$100,000) shall be transmitted by letter through the MSC Commander to CECW-OD, and shall include a copy of the existing case file documentation as outlined below. Advance coordination by telephone is authorized and encouraged.

c. Documentation.

(1) Case file. The case file for each reported obstruction shall include the following information (items (i)-(m) apply only when Corps removal is undertaken):

- (a) Location (shown on large-scale chart)
- (b) Method of locating
- (c) Description of the obstruction
- (d) Identification of vessel (if ascertainable)
 - name, flag, vessel type, documentation
 - dimensions, construction (steel, wood, etc.)
 - cargo

- (e) Date/description of incident/sinking (if known)
- (f) Identification of owner, operator or lessee
- (g) Summary of consultation with Coast Guard
 - Coast Guard point of contact
 - notes re: all hazard-to-navigation factors
 - remedial actions done/planned
 - rationale for decisions
- (h) Signature of decision-authority (Corps)
- (i) Documentation establishing abandonment
- (j) Authority cite (section 19 or 20)
- (k) Cost estimate/schedule
- (l) Procurement documentation
- (m) Final disposition - date, cost, disposal

(2) Cost/expense records. Any case which results in Corps removal is potentially a case for reimbursement, even if the owner (or other responsible party) is not known at the time of removal. In all such cases, records shall be maintained to account for all Corps hired labor involved in the process, detailing for each individual the time spent by task (e.g., writing plans/specs for removal, monitoring contractor, etc.).

d. Choosing the responsible party. Historically, the owner has a special obligation for wreck removal, even while PL 99-662 extends jurisdiction to operators or lessees. In all cases where the owner can be identified and reached, the Corps will pursue removal by the owner, regardless of which party may have been responsible for the wreck/incident. (Note: owners cannot delegate liability or relieve themselves of liability by selling, transferring ownership or abandoning the wreck.) When the owner is not determinable or available (and the wreck occurred after November 17, 1986), the operator or lessee may be compelled to remove the wreck, again regardless of negligence or responsibility for the incident.

e. Abandonment issues.

(1) Abandonment is an owner's giving up the exclusive right to salvage.

(2) The lapse of 30 days with no action is sufficient legally to establish abandonment, however, Corps policy is to provide 30 days after notification to the owner of their legal obligation.

(3) After the Corps establishes abandonment (in cases where the Corps will undertake removal), a letter will be sent to the owner (or operator/lessee) as notification. Appendix K is a sample letter, which may be tailored to individual cases.

(4) A declaration of abandonment from the owner is sufficient to establish abandonment in less than 30 days. A declaration from any other party does not constitute a valid abandonment, since abandonment relates to title in the vessel. Before establishing abandonment on the basis of a declaration, the District Commander should ensure that the person being represented as the owner is in fact the legal owner.

(5) Any declaration or offer of abandonment shall be acknowledged in writing. The reply shall not indicate in any way that the Corps is "accepting" abandonment or accepting responsibility/ liability for the wreck. The sample letter at Appendix L shall be used in such cases. If the letter was received from a party other than the legal owner, the reply should additionally recognize that fact.

(6) An abandonment, once established, generally cannot be retracted by the owner. The advice of counsel should be sought in such cases.

(7) Salvage by a third party (before or after abandonment) does not affect the obligation of the original owner to mark and remove the wreck.

f. Emergency removal authority under "Section 20" of the River and Harbor Act of 1899, as amended (33 USC 409, 411-415) should be used only when an expedited removal is necessary for the protection of life or property, or when an obstruction seriously impedes navigation. Emergency removals may involve a taking of private property by the Federal Government, with a potential for legal liability if not sufficiently justified by the circumstances. The exercise of this authority is always a special case, and therefore requires special notifications to HQUSACE when invoked.

g. Delegation limits. The authority to undertake removal up to \$100,000 (contract cost) is delegated to district commanders (and MSC commanders for operating divisions). Further delegation is authorized, but must be in writing (either specifying individual name or job position). Delegation of emergency removal authority (Section 20 removals) may not be made below the level of the Chief, Construction-Operations Division (or Operations Division). Note: Emergency actions to prevent loss of life or significant property damage shall NEVER be delayed on the basis of estimated cost or lack of cost estimate.

4-5. Coordination with Coast Guard.

a. Coast Guard evaluations not binding. The MOA charges each agency with pursuing a joint determination of whether an obstruction constitutes a hazard to navigation. District commanders should not simply defer to the Coast Guard in this decision process. They should assess the situation from the Corps perspective, make a judgment, and attempt to reconcile that judgment with the Coast Guard district. It is anticipated that most determinations can be agreed upon at that level, but some may require referral up the chain of command, or to HQUSACE. The District Commander should also keep in mind that a hazard determination does not by itself dictate need for removal. The degree of hazard can, in some cases, be mitigated by other response actions.

b. Corps assistance with marking. The District Commander may, upon request, provide assistance to the Coast Guard in locating and/or marking a wreck; assistance shall be provided if resources are available and if the Corps has a special capability in the particular case. Such assistance is normally not reimbursable from the Coast Guard, unless the Coast Guard recovers marking costs from the responsible party as addressed in 33 CFR 64 - Marking of Sunken Obstructions. In all cases, cost records should be maintained for the possibility of later reimbursement (see 33 CFR 74).

c. Marking enforcement. When an owner or other responsible party undertakes removal, the Corps shall monitor the operation, including the maintenance of marking. The Corps shall not, however, enforce marking requirements. Marking problems shall be referred to the Coast Guard for enforcement.

d. USCG help in identifying responsible parties. The Coast Guard maintains a computerized Marine Safety Information System (MSIS), which can provide quick access to ownership and operator data for virtually all foreign vessels entering U.S. ports, and for most U.S. vessels which are documented, inspected or boarded by the Coast Guard or which have been involved in a reportable marine casualty. MSIS is accessible from every Marine Safety Office, Captain of the Port office, Marine Inspection Office, and district office.

e. Notifications to owner. The Corps and the Coast Guard shall consult to determine which agency will take the lead in notifying the owner (or other party) of their responsibility to mark and remove a wreck. This is a local decision, and may be made on a case-by-case basis or subject to a more general agreement. When the District Commander defers to the Coast Guard for notification to the owner, the Commander shall ensure that all the relevant elements of Appendix M are addressed. Separate notifications may be made, but are discouraged as not reflecting well on federal coordination.

f. Interagency notifications/correspondence. District commanders shall keep the Coast Guard district informed of status/progress of removal actions, any changes in status/ situation regarding the factors which were considered in determining hazard and remedial actions, any problems with marking as observed by the Corps, any pollution observed, and any other circumstances which may impact on navigational safety.

g. Coast Guard removals. In cases involving substantial threat to the human environment from pollution, the Coast Guard may exercise its own authority to remove or destroy a vessel. Some of these cases may also involve a hazard to navigation (triggering Corps jurisdiction) and some may not. When circumstances would permit removal by either agency, the decision as to which agency will take the lead shall be made locally, if possible. The Coast Guard will always make the final decision whether to invoke its authority for removal under 33 CFR 153 (Control of Pollution by Oil and Hazardous Substances Discharge Removal). However, the Corps may not invoke its emergency removal authority under Section 20 (33 USC 415) when the sole purpose of removal is for mitigating a pollution threat. Section 20 removal must always be tied to navigation impacts.

h. Annual reconciliation of cases. Status of all existing hazards to navigation shall be compared with the Coast Guard district at least annually. District commanders shall coordinate locally with the Coast Guard for appropriate format, schedule, etc.

4-6. Notifications/Reports.

a. Emergency removals. In all cases of emergency removal, district commanders shall ensure immediate telephone notification to their MSC and headquarters (CECW-OD), followed by message within 24 hours reporting the situation and actions taken/planned. Telephone notifications to HQUSACE after-hours shall be made through the Army Operations Center (703-695-2769), directed to a CECW-OD representative.

b. Significant cases. In all non-emergency cases involving a potential national-level interest by the public or media, or special interest groups, district commanders shall insure prompt notification to their MSC and CECW-OD by telephone or message, as appropriate.

c. Requests for HQUSACE approval. Where contract costs for removal are estimated to exceed \$100,000, requests shall be transmitted by letter through the MSC Commander to CECW-OD, and shall include a copy of the existing case file documentation as outlined in paragraph 4-4 above. Advance coordination by telephone is authorized and encouraged.

d. Notifications to Coast Guard are covered in paragraph 4-5.

4-7. Funding.

a. Charging/accounting procedure. Funding for all Corps removal efforts under \$100,000 shall initially be charged to the revolving fund. After completion of removal, the district shall submit a request through the MSC to CECW-OD for reimbursement from O&M, General. For cases over \$100,000, instructions for funding may be provided with the approval from CECW-OD.

b. Reimbursable costs (those which are recoverable from the owner/operator/lessee) shall be all "reasonable" costs associated with removal, including:

- (1) preparation of plans/specifications
- (2) contract preparation
- (3) contract administration (Corps personnel)
- (4) cost to locate the wreck
- (5) direct removal costs (by contractor or Corps)
- (6) cost to maintain site safety during removal
- (7) overhead (for all hired labor) and equipment
- (8) disposal

c. Non-reimbursable costs are any which exceed the "reasonable" (i.e., necessary) removal cost in a given situation, and any of the agency's administrative costs not directly related to the removal including:

- (1) investigation of obstruction
- (2) consultation with Coast Guard
- (3) resolution of dispute with Coast Guard
- (4) internal Corps notifications and situation reports

d. Cost recovery from the owner/operator/lessee shall be initiated by letter correspondence (see sample letter at Appendix N). Review of cost documentation by counsel, before submission to the responsible party for payment, is encouraged.

4-8. Legal Actions.

a. Criminal actions. Generally, the pursuit of criminal penalties should be reserved for cases where:

- (1) the case involves either gross negligence or willfulness,
- (2) the individual to be prosecuted has not acted responsibly or diligently in removing the wreck, and
- (3) other legal recourse does not provide sufficient remedy.

b. Civil actions. The Corps may, however, pursue a civil judgment against an owner/operator/lessee to compel removal, and may file suit to recover any loss or damages to the Corps.

c. License suspension or revocation. Any master, mate, engineer, pilot or operator holding a Coast Guard license may be subject to suspension and revocation proceedings concerning their involvement in the incident which resulted in the wreck. The local Coast Guard Marine Safety/Marine Inspection Office would normally initiate an investigation in such cases where there is evidence of misconduct, negligence, incompetence or violation of certain U.S. laws.

d. Collections. When an owner/operator/lessee does not respond within 30 days to a letter seeking reimbursement of removal costs, the case may be referred to counsel for collection through the courts.