

State of Massachusetts



Abandoned and Derelict Vessel (ADV) Legislative and Administrative Review - 2015

NOAA Marine Debris Region:
Northeast



Definition of a Vessel

The State of Massachusetts defines a “vessel” under Mass. Gen. Laws ch. 90B, § 1 as:

Vessel: watercraft of every description, except a seaplane on the water, used or capable of being used as a means of transportation on water.

Massachusetts law also provides a more detailed definition under Mass. Gen. Laws ch. 91, § 38:

Vessel: a boat or watercraft of every description, motorized and non-motorized, except a seaplane on the water, used or capable of being used as a means of transportation on water including, but not limited to, documented boats and ships, flat-bottomed boats, barges, scows and rafts (including all equipment and property aboard the vessel).

Definition of an Abandoned and/or Derelict Vessel

Pertaining to vessels, the State of Massachusetts provides a definition for “abandoned” under Mass. Gen. Laws ch. 91, § 38:

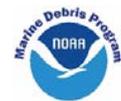
Abandoned: unoccupied, deserted, forsaken, derelict, wrecked or sunken vessel or other shipwrecked property, on the shores or waters of the Commonwealth and not in the custody of the owner or his agent or of any other person lawfully authorized to take possession of the vessel and deemed by the department or the harbormaster of the city or town, in whose jurisdiction the vessel lies or whomsoever is so empowered by said city or town, to be an obstruction to the safe and convenient navigation or other lawful use of such waters.

The Office of Law Enforcement, under the Office of Energy and Environmental Affairs, has their own definition under the Code of Massachusetts Regulations relating to the towing of a vessel to protect public safety. They provide a presumption in 323 Mass. Code Regs. § 2.10(4), that:

For purposes of 323 CMR 2.00 a vessel shall be presumed to be abandoned if left on the shores of the waters of the Commonwealth not moored, anchored or made fast to the shore and unattended and/or on property of another without the consent of such property owner for a period of greater than 72 hours.

In addition, the Office of Law Enforcement (Massachusetts Environmental Police) provides another definition for an abandoned vessel; which is provided on their “*Procedures for obtaining legal ownership of abandoned or salvaged boats, ATV’s or snowmobiles (August 2011).*” They consider a vessel abandoned if it has:

- remained moored, grounded, or otherwise attached or fastened to or upon or immediately adjacent to private property for more than 30 days without the consent of the owner or person or entity in control of the property; or
- been found adrift or unattended in or upon the waters of the Commonwealth and constitutes a potential health, public safety, or environmental hazard; or
- been recovered from a dump and/or landfill.



Formal State Program for Abandoned Vessels

The State of Massachusetts currently does not have a formal program to deal with abandoned vessels. Massachusetts General Law does contain numerous provisions, which were revised in 2010, that address abandoned vessels under Mass. Gen. Laws ch. 91, § 38 thru § 48. These provisions are regulated by the Department of Conservation and Recreation, through the Division of Waterways and the Office of Law Enforcement, and address the willful abandonment of vessels, titling procedures and set penalties for persons who abandon vessels. The Office of Law Enforcement does provide a flyer (see Special Factors section) that addresses the procedures for obtaining legal ownership of an abandoned vessel and a “Request File Search” form used to identify the vessel owner of lienholders, which also acts as a notification to the Department about the abandonment.

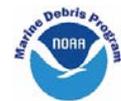
Massachusetts law makes it unlawful for any person to willfully abandon a vessel within the limits of a harbor or on the shores of the Commonwealth (Mass. Gen. Laws ch. 91, § 43B). Any person who willfully abandons a vessel in Massachusetts can be fined up to \$10,000; however, this does not apply if the vessel became abandoned by reason of an accident, emergency, navigation error or in order to prevent loss of life or the sinking of the vessel.

Designation of Abandoned and/or Derelict Vessels

Under Massachusetts General Law (Mass. Gen. Laws ch. 91, § 39) it is unlawful for any person to willfully abandon a vessel upon public land, on the shores or waters of the Commonwealth or on private property without consent. If a vessel is left on public land or waters or on private property without consent for a period of more than 90 days it shall constitute prima facie evidence of abandonment, at which point it can be designated as abandoned by the state. If the vessel was placed at a storage or repair facility and is subject to Mass. Gen. Laws ch. 6 (§ 63, § 179 or § 180), Mass. Gen. Laws ch. 9 (§ 26 - § 27D), Mass. Gen. Laws ch. 255 (§ 14), or any other federal or state law it cannot be considered an abandoned vessel under Mass. Gen. Laws ch. 91.

If a vessel meets the definition of an abandoned vessel (as defined under Mass. Gen. Laws ch. 91 § 39), and is not under the exclusive jurisdiction of the United States, a claimant wishing to obtain a title can apply for title with the Massachusetts Environmental Police pursuant to Mass. Gen. Laws ch. 91 § 40. If more than one claimant applies for the vessel title the preference is first given to any lienholders, in order of priority as determined by law, and then to the Department (or another agency of the State) followed by the municipal government with jurisdiction and finally the federal government. If two or more claimants have equal preference then the Office of Law Enforcement is required to hold an auction with the highest bidder receiving the title. If the vessel is creating emergency conditions and following the procedures under Mass. Gen. Laws ch. 91 § 40 would jeopardize navigation, public health or safety then no preference is given.

Pursuant to Mass. Gen. Laws ch. 91 § 40, in order to apply for title the claimant is required to contact the Office of Law Enforcement, using any available identification on the vessel, to determine if the vessel has been stolen. They are also required to secure the owner’s last known address and the addresses of any lienholders on record using a “Request for File Search”. After 30 days, if the Office of Law Enforcement determines that the vessel is abandoned and not stolen, the claimant shall notify the owner, all lienholders and the Department by certified mail (return receipt requested). If the owner of record does not respond to the notice within 30 days the claimant is required to post the notice for 3



Massachusetts ADV Legislative and Administrative Review 2015

consecutive printings in a newspaper of general circulation within the county, city or town of the owners last known address or, if not known, using the lienholder(s) business address. If the addresses of the owner or lienholder(s) are unknown then they must publish the notice using the location of the vessel. The notice must include the following information:

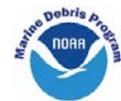
1. a description of the vessel and any identifying information;
2. a description of the location where the vessel is situated;
3. a statement informing the owner and any lienholder of their right to reclaim the vessel within 30 days, subject to the rights of any other lienholder;
4. a statement that failure to claim the vessel will constitute a waiver of all rights, title and interest in the vessel; and
5. a statement that if ownership or a lienholder interest is not claimed and the vessel is not removed within 90 days after the owner, the owner's agent or employee signs the return receipt or within 90 days after the last day of notice by publication, whichever is later, the claimant may apply to the office for title to the vessel.

If the owner or lienholder(s) fail to claim the vessel within 90 days after receiving notice, either by mail or publication, and it has been determined that the State of Massachusetts or the U.S. government is not the owner, the claimant may apply for title, subject to any valid lien, pursuant to Mass. Gen. Laws ch. 91 § 41. The application must include:

- (i) a notarized affidavit by the claimant stating that the vessel has been abandoned for at least 90 days, that all notice requirements pursuant to this chapter have been satisfied and that the vessel is not subject to any other applicable state or federal law or regulation;
- (ii) if applicable, a copy of the letter to the identified owner and any lienholders and accompanying return receipts or the claimant may supply a detailed explanation of the unsuccessful steps taken to identify and secure the address of the owner and any lienholders, including any returned notices; and
- (iii) in the case of notice by publication, original copies of the notice as published.

Once these requirements are satisfied then the Office of Law Enforcement must provide a certification which will be included with the records of the granting of the title. Pursuant to Mass. Gen. Laws ch. 91 § 42 the Office of Law Enforcement may then grant title of the vessel to the claimant, as long as all the requirements have been met as set forth under Chapter 9, any fees or taxes owed are paid, and the vessel is not bound by other state statutes.

Once title is received the claimant may remove, destroy or sell the vessel (Mass. Gen. Laws ch. 91 § 43) or they can register it with the State; if they choose to operate it within Massachusetts (Mass. Gen. Laws ch. 9 § 42). Pursuant to Mass. Gen. Laws ch. 91 § 43, if an abandoned vessel (or other unauthorized structure) is found in the tide waters of the Commonwealth and is, or may become, an obstruction to navigation or other lawful uses of such waters, the Department can remove it or cause it to be removed and apply for title in accordance with Mass. Gen. Laws ch. 91 § 40 thru 91 § 43. If the vessel does not pose an obstruction to navigation, or hinder other lawful uses of the tidewaters, and no one has attempted to claim the vessel within 60 days the Department may become the claimant for title. It is unlawful in Massachusetts to obtain or attempt to obtain a vessel title using fraudulent means (Mass. Gen. Laws ch. 91, § 43C).



Massachusetts ADV Legislative and Administrative Review 2015

Under Massachusetts law if a person has a contract, express or implied, with the owner of a vessel or their agents they can place a lien on the vessel and its contents for monies due (for labor, materials, repairs, supplies, etc.) pursuant to Mass. Gen. Laws ch. 255 § 14. Liens can also be placed on vessels (under 40 feet in length) for monies due for storage charges (Mass. Gen. Laws ch. 255 § 14A). Under normal circumstances the person holding the lien must file suit in civil court in order to collect monies due from the owner pursuant to Mass. Gen. Laws ch. 254.

However, according to under Mass. Gen. Laws ch. 255 § 17, if a vessel is presumed to be abandoned then the lienholder (under Mass. Gen. Laws ch. 255 § 14 or 91 § 14B) can sell the vessel at public auction or dispose of it without filing a civil action suit. Under these circumstances the vessel is presumed to be abandoned if:

- (i) the lienholder sent a notice to owner of record by certified mail at his last known address and shall include, but not be limited to, the amount of the lien and any proposed disposition or sale of the vessel;
- (ii) the lienholder published a notice of the lien, which shall include, but not be limited to: a description of the vessel, a description of where the vessel is located and a proposed disposition or sale in a newspaper of general circulation in the city or town of the owner of record's last known address for 3 consecutive days; and
- (iii) no response or reply was received from the owner of record within 90 days after the date of publication indicating an ability to satisfy the debt to the lienholder.

If the previous requirements are met the lienholder can dispose of the vessel, providing they file a notarized affidavit (which includes the notice) with the court stating that no reply was received from the owner within 90 days of posting the required notification. If the lienholder elects to sell the vessel at public auction the Department shall issue an abandonment of title document to the lienholder, provided the requirements under Mass. Gen. Laws ch. 255 § 17 were met, and a new title to the purchaser of the vessel.

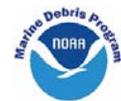
Responsibility for Removal of Abandoned or Derelict Vessels

Under Massachusetts code, the last owner of record of a vessel at the time it was abandoned shall be presumed to be the person who abandoned the same or caused or procured its abandonment, unless the vessel was reported as stolen (323 Mass. Code Regs. § 2.10-4). Pursuant to Mass. Gen. Laws ch. 91 § 43, the removal costs shall be borne by the previous owner, if one has been identified, otherwise the claimant becomes responsible for the removal costs.

The State of Massachusetts, through any person authorized to enforce Mass. Gen. Laws ch. 90B, can cause a vessel to be towed if it is deemed necessary for the protection of public safety pursuant to 323 Mass. Code Regs. § 2.10. Under this code, as it pertains to abandoned vessels, they can place a vessel in tow:

- (c) whenever a vessel is afloat and unrestrained on the waters of the Commonwealth and is unattended;
- (f) whenever a vessel is abandoned on the shores of the waters of the Commonwealth or on property of another.

If a vessel is lawfully towed pursuant to 323 Mass. Code Regs. § 2.10(1), the person who authorized the towing cannot be held liable for damages, unless they acted recklessly or with gross negligence (323 Mass. Code Regs. § 2.10(2)). The owner of the vessel then becomes liable



Massachusetts ADV Legislative and Administrative Review 2015

for the towing costs and the vessel can be held or disposed of following the procedures prescribed under Mass. Gen. Laws ch. § 135. According to 323 Mass. Code Regs. § 2.10(4) there is also a presumption of abandonment, which is included under the definitions of abandoned and derelict vessels (above).

Removal and Disposal Requirements/Guidelines

The State of Massachusetts does not provide any specific regulations regarding the removal requirements for abandoned vessels. Under Mass. Gen. Laws ch. 91 § 43, the state does stipulate that “If the new owner intends to destroy or otherwise dispose of a vessel, the new owner shall do so in compliance with all related state and federal statutes”.

Differences between Commercial and Recreational Vessel Treatment

Massachusetts does not distinguish between commercial and recreation vessel in any of the legislation concerning abandoned vessels.

Vessel Size Requirements or Limits

There are no size requirement or limits set forth in Massachusetts laws or codes with regards to abandoned vessel determination.

Funding Sources

In 2008, under an “Act relative to the disposition of abandoned vessels,” the Massachusetts Legislature authorized the establishment of the Abandoned Vessel Trust Fund (Mass. Gen. Laws ch. 10 § 35GG). This fund was established to help fund the removal, by the Department of Conservation and Recreation, of abandoned vessels from public waterways. Monies for the trust fund are received from the sale of abandoned vessels and/or through appropriations from the State’s General Fund. Proceeds gained from the sale of abandoned vessels must be held in trust for 2 years and, if unclaimed by the owner of record, become the property of the Abandoned Vessel Trust Fund.

Lead State Agency

Within Massachusetts the lead agency for the removal of abandoned vessels is the Department of Conservation and Recreation, acting through the Division of Waterways.

Email: mass.parks@state.ma.us

Telephone: 617-626-1250

Website: <http://www.mass.gov/eea/agencies/dcr/>

The Office of Law Enforcement (Environmental Police) is in charge of file searches and titling of abandoned vessels in Massachusetts.

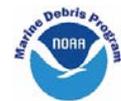
Email: through website

Telephone: 781-740-1163 (Coastal Enforcement Office)

Website: <http://www.mass.gov/eea/grants-and-tech-assistance/enforcement/environmental-police/>

Insurance Requirements for Vessels

The State of Massachusetts does not require vessel insurance. They do require vessels to be registered with the State in accordance with Mass. Gen. Laws ch. 90B.



Specific Location Factors, Limitations and Additional Information

According to the Office of Law Enforcement, when a vessel is abandoned at a marina or boat yard the following steps must be taken in order to obtain title and remove or dispose of the vessel.

1. A “Request for File Search” must be completed and sent in to our office to research the last known owner on the abandoned boat.
2. A certified mail notice must be sent to the identified owner and lien holders, at their last known address, with the amount of the lien and the proposed disposition or sale of the vessel. If the letter comes back “moved no forwarding address”, submit the actual envelope unopened and any accompanying return receipts or provide a detailed explanation of the unsuccessful steps taken to identify the owner and lienholder.
3. A legal notice of the lien and proposed disposition must be posted for three (3) consecutive days in a newspaper of general circulation in the city or town of the owner’s last known address. The legal notice shall include:
 - a description of the vessel;
 - a description of where the vessel is located;
 - name and address of last known owner; and
 - the proposed disposition of sale.
4. Pencil rubbing or printed digital picture of the hull ID 12 character serial number.
5. A notarized affidavit by the marina stating that the property has been abandoned for at least ninety days (90) and all notice requirements have been satisfied.
6. Completed Registration & Titling Application (and \$25 for the title fees).

These steps are outlined in Massachusetts “Procedures for Obtaining Legal Ownership of Abandoned or Salvaged Boats, ATV’s or Snowmobiles” (accessed at <http://www.mass.gov/eea/grants-and-tech-assistance/enforcement/environmental-police/boat-ohv-and-snowmobile-registration-bureau/abandonedproc.pdf>)

Prioritization Scheme

Massachusetts does not have a prioritization scheme for the removal of abandoned or derelict vessels within the state. They do have the authority to immediately remove vessels that are, or may become, a navigational hazard or impede other lawful uses of the state’s waters (Mass. Gen. Laws ch. 91 § 43A).

Legislation and Administrative Codes

The laws and administrative codes referenced in this document can be accessed from:

Massachusetts General Laws (2014):
<https://malegislature.gov/Laws/GeneralLaws>

Code of Massachusetts Regulations (2015):
<http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/>

These Legislative and Administrative Reviews are intended for informational purposes only. They are summaries and not meant to be legal references, and should not be used as such. See the official state statutes and administrative codes for current state laws and rules and regulations for any legal references.