

OCEANS PROTECTION PLAN

**An Act respecting wrecks,
abandoned, dilapidated or hazardous
vessels and salvage operations
(*Wrecked, Abandoned or Hazardous Vessels Act*)**



Purpose

- To review the intent and effect of all the major parts of the *Wrecked, Abandoned or Hazardous Vessels Act** in order of their appearance in the draft legislation.

* Long title is “An Act respecting wrecks, abandoned, dilapidated or hazardous vessels and salvage operations”

A key piece of a national strategy

- Federal government announced *Oceans Protection Plan* (November 2016), which includes a comprehensive national **Strategy to Address Abandoned and Wrecked Vessels**, which includes:
 - Short-term funding programs for vessel removals, education, and research (e.g., **Abandoned Boats Program & Abandoned and Wrecked Vessels Removal Program**)
 - Enhancing commercial vessel and pleasure craft owner identification systems
 - A national inventory of abandoned and wrecked vessels, prioritized according to risk
 - Vessel-owner financed funds to remediate wrecked, abandoned and hazardous vessels in the longer term
- Strategy is informed by *Private Members' Motion M-40* (Abandoned Vessels) unanimously adopted in House of Commons (October 2016)
- Legislation will contribute to the protection of the public, the environment and infrastructure from negative impacts arising from vessels of concern

Challenges

- Estimated to be hundreds of problem vessels in Canadian waters
- Current federal authorities are limited to addressing only certain impacts arising from vessels (i.e., pollution discharge and navigation obstructions)
 - Does not extend to addressing other hazards posed by vessels, nor the vessel itself
- Current laws do not prohibit vessel abandonment, and insufficient authorities exist to take proactive actions on vessels posing hazards
- Multijurisdictional issue as various federal, provincial, territorial and municipal governments, Indigenous groups and coastal communities have roles to play

Legislation Objectives

- Protect coastal and shoreline communities, the environment and infrastructure; and reduce burden on taxpayers, arising from abandoned, dilapidated and wrecked vessels by:
 - Strengthening owner liability for their vessels, including costs for clean up
 - Addressing irresponsible vessel management, including prohibiting vessel abandonment
 - Enhancing federal powers to take proactive action on problem vessels, including undertaking hazard assessments to inform measures
 - Introducing compliance and enforcement regime with offenses and penalties
 - Clarifying roles and responsibilities between Transport Canada and Fisheries, Oceans and the Canadian Coast Guard – **see Annex**

Part 1 – Removal of Wrecks

- Gives force of law to the *Nairobi International Convention on the Removal of Wrecks, 2007*
- Makes vessel owners strictly liable for the costs to locate, mark and, if necessary, remove a hazardous wreck resulting from a maritime accident
- Minister of Fisheries, Oceans and the Canadian Coast Guard can order owner to take actions, or can take actions directly if the owner is unknown or fails to comply
- Requires owners of vessels 300 gross tons and above, and vessels under tow, to carry wreck removal insurance or financial security with authority for claimants to take direct action against the insurer

Part 2 – Vessels and Wrecks of Concern

- Addresses irresponsible vessel management by prohibiting the following:
 - Abandoning a vessel unless authorized by law or in case of maritime emergency
 - Causing a vessel to become a wreck
 - Leaving a vessel adrift more than 48 hours
 - Leaving a dilapidated vessel (poor condition/state of neglect) in the same area for more than 60 consecutive days without consent
- Enhances federal powers to take action by providing authority to:
 - Order owners to remove/dispose dilapidated vessels, including those left on federal crown property
 - Order owners to take measures to prevent, mitigate or eliminate hazards posed by vessels
 - Take direct action to remove/dispose of problem vessels if the owner is unknown or fails to comply – owner remains liable for all costs and damages
 - Sell, or otherwise dispose of, abandoned, dilapidated or wrecked vessels, subject to a public notification process; and hold the owner liable for costs

Part 3 – Salvage

- Gives force of law to the *International Salvage Convention, 1989*
 - Ratified by Canada in 1994
 - Formerly included in Part 6 of the *Canada Shipping Act, 2001*
- Ensures uniform rules regarding salvage operations, protects salvor rights and the environment
- Moved to new Act to consolidate provisions that deal with wrecks, salvage and protection of the environment
- Minister of Transport retains lead authority for salvage provisions

Part 4 – Receiver of Wreck

- Formerly Part 7 of the *Canada Shipping Act, 2001*
 - Purpose is to protect and preserve rights of owners of wrecks when unknown or cannot be located, as well as salvors
- Proposed amendments will strengthen these protections:
 - Persons no longer allowed to take possession of found wrecks unless they are being towed into Canada or are in danger (e.g., vessel adrift)
 - Receiver of Wreck will determine whether salvor can take or keep possession
 - Formalizes a public notification process to identify owners, after the Receiver has taken reasonable steps
 - Owners have 30 days to come forward, and another 30 days to satisfy claims and pay fees and salvage award (if applicable)
 - Provides for new enforcement powers e.g., inspection, detention, seizure and ability to issue Administrative Monetary Penalties (AMPs)
- Minister of Transport retains lead authority

Part 5 – Administration and Enforcement

- Establishes an enforcement regime that authorizes the issuance of administrative monetary penalties (AMPs), creates regulatory offences (summary convictions and indictments) and sets out a penalty regime to deter non-compliance
- Modeled on existing marine legislation and updated based on more recent enforcement schemes (e.g., *Safe Foods for Canadians Act*)
- Designed to cover pleasure craft and commercial vessels of all sizes, domestic and foreign, in Canadian waters and the exclusive economic zone
- Owners liable for all costs incurred for any enforcement measures taken
- Includes powers necessary to enable the Minister of Fisheries, Oceans and the Canadian Coast Guard to determine whether a vessel or wreck poses, or may pose, a hazard, and to ensure appropriate action is taken

Part 5 – Offenses and Punishments

- Offenses that could be subject to an AMP are identified – enabling the ability to issue AMPs once the Act comes into force
 - Maximum penalties for certain violations (e.g., vessel abandonment) far higher than other marine legislation to reflect costs of removal/disposal and impacts – e.g., \$50K instead of \$5K maximum for individuals
- Fines / penal sanctions upon summary conviction or indictment are similar to the *Canadian Environmental Protection Act, 1999* – includes minimum fines for individuals and corporation
- Upon conviction:
 - Court can limit offender's ability to operate a vessel
 - Minister can suspend, cancel or refuse to issue pleasure craft licenses or vessel registrations to those who contravene the Act

Part 6 – General

- Provides general immunity to enforcement officers, receivers of wreck or civil servants, as well as third parties who assist in taking or are directed in taking measures, unless there is gross negligence (i.e., acting in bad faith)
- Crown remains liable for negligence of its employees
- Owners of vessels are not immune
- Establishes debt due to the Crown for vessel owners in respect of costs incurred by Minister of Transport or Minister of Fisheries, Oceans and the Canadian Coast Guard

Part 7 – Regulations

- Minister of Transport is lead on recommending regulations to GIC, but will collaborate with the Minister of Fisheries, Oceans and the Canadian Coast Guard as necessary
- Provides regulatory making authorities to address a variety of matters including:
 - extending or restricting application of the Act (e.g., type/class of vessel or wreck, geographical areas, types of hazards)
 - further defining or expanding scope of wreck removal insurance requirements
 - setting fees for services (e.g., issuing insurance certificates)
 - salvage operation requirements (i.e., salvage plans)
 - vessel towing requirements
 - vessel breaking requirements (both domestic and destined outside Canada)

Other Key Elements

- Includes authority to delegate powers and functions for carrying out the purposes of the Act to other persons and governments (e.g., provinces, Indigenous governments, municipal and local governments)
- Duty to consult provisions between the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard on key subject matters of expertise
- Information-sharing provisions to support effective administration and enforcement while also enhancing integrity of vessel ownership information
- Transitional, related and consequential amendments to various other Acts to ensure a coherent legislative framework
- Provides for a five-year legislative review

Summary

- *Wrecked, Abandoned or Hazardous Vessels Act* is a core element of the national strategy on abandoned and wreck vessels, a critical component of the Government's commitments under the Oceans Protection Plan
- Passage is critical to closing an important gap to enhance vessel owner responsibility and liability and strengthen federal leadership in protecting and restoring Canada's marine ecosystems and health/sustainability of our coasts and shorelines
- Brings Canada alongside other signatories of the Nairobi Convention, a key international instrument for governing vessel owner liability with respect to wrecks caused by maritime casualties

Annex – Roles and responsibilities

Transport Canada	Canadian Coast Guard	Fisheries and Oceans
Develop regulations, policies, guidelines	Operational lead for addressing vessels of concern	Take appropriate actions on hazardous vessels/wrecks located in Small Craft Harbours
Issue insurance certificates and verify compliance with insurance requirements	Coordinate and determine hazard assessments	
Oversee and enforce the Salvage Convention and Receiver of Wreck provisions	Issue orders and/or take appropriate actions on hazardous vessels and wrecks, <u>including enforcement</u>	Order removal of dilapidated vessels left in Small Craft Harbours or take action directly
Enforcement of prohibitions (e.g., abandonment, dilapidated vessels)	Order removal of dilapidated vessels left on property under responsibility of the Minister of Fisheries, Oceans and the Canadian Coast Guard or take action directly	
Order removal of dilapidated vessels on Crown property or take action directly, except property under responsibility of the Minister of Fisheries, Oceans and the Canadian Coast Guard		

Annex – Canadian Regime compared with the US

Federal Strategy on Abandoned and Wrecked Vessels	Equivalent in the United States – Federal and coastal states
State Party to the Nairobi Convention	No
Federal legislative framework with prohibitions against vessel abandonment, irresponsible vessel management, hazardous vessels and wrecks	Federal and state level provisions dealing with abandoned and derelict vessels, including similar provisions holding owners accountable
Powers to take proactive measures on problem (hazardous) vessels and wrecks	Similar provisions holding owners liable for costs
Short-term funding programs for legacy abandoned vessel removals	Federal and state level programs
Vessel owner-financed funds to pay for future vessel removals (planned)	Some states have implemented surcharges on vessel registrations to fund removal programs
National inventory of problem vessels prioritized by risk (planned)	Federal inventory of wrecks. Some states have documented existing and past problem vessels and can be searched on-line
Enhancements to commercial vessel and pleasure craft owner identification systems	Some states have implemented yearly registration systems for pleasure craft, and the Federal commercial registry certificate is renewed yearly