

CHAPTER 4 - REMOVAL OF WRECKS AND OTHER OBSTRUCTIONS

4-1. Purpose. This chapter establishes the policy 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 (Public Law (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. Policy. It is the policy of the USACE that:

a. District commanders, in coordination with the appropriate USCG district, shall determine whether a sunken vessel constitutes a navigation hazard as defined in EP 1130-2-520. Specific guidance, criteria, and procedure for declaring an obstruction as a navigation hazard is described in that document. (Proper coordination between the USACE and USCG regarding marking and removal of sunken vessels and other obstructions to navigation is outlined in Appendix B, Memorandum of Agreement (MOA) Between the Department of Army and the U.S. Coast Guard, dated 1 June 1988.)

b. USACE removal of wrecks or other obstacles constituting a declared hazard to navigation under this authority shall be limited to removal of vessels -- including U.S. Public vessels -- but not including objects such as trucks, train cars, boulders, or debris. Cases which fall outside the scope of this jurisdiction may be covered under other authorities, but are outside the scope of this chapter. Authority is further limited to only those cases where navigation is affected or potentially may be affected by movement of the wreck. 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. Where contract costs for removal are estimated to exceed \$100,000, requests shall be transmitted by letter through the MSC Commander for endorsement to CECW-OD, and shall include a copy of the existing case file documentation as outlined in EP 1130-2-520. Timely CECW-OD approval of requests for funding in excess of \$100,000 is dependent upon receipt of sufficient information on the proposed removal to make a reasoned conclusion and receipt of the MSC endorsement of the removal. Advance coordination by telephone, FAX, or E-mail is authorized and encouraged.

c. Marking and removal of wrecks and other obstructions is the legal responsibility of the owner/operator/lessee for every sunken vessel in U.S. navigable waters, bank-to-bank (the same scope as Section 10 permit authority).

(1) When such removal is not pursued diligently, removal by the local USACE district is discretionary (not mandatory) and is dependent on a hazard determination and an assessment of risk (as applicable) in the context of other alternative measures to reduce risk, as well as the relative cost of removal. Specific procedures and criteria for decisions on whether Federal funds and/or manpower shall be utilized in the removal of navigation hazards are described in EP 1130-2-520.

(2) Abandonment is an owner's giving up the exclusive right to salvage and an indication of no intent to claim the vessel. Abandonment DOES NOT relieve the owner of his/her legal obligation to remove the wreck or of liability for damages caused by the wreck (unless he or she is a non-negligent owner of a wreck which sank before enactment of PL 99-662, November 17, 1986).

(a) The lapse of 30 days with no action is sufficient legally to establish abandonment. However, USACE policy is to provide 30 days after notification to the owner of their legal obligation, except where precluded by the severity of the obstruction.

(b) After the USACE establishes abandonment (in cases where the USACE will undertake removal), a letter will be sent to the owner (or operator/lessee) as notification. Guidance on required legal communication with, obligations and responsibilities of, and abandonment of vessels by owners/operators/lessees of sunken vessels and other obstructions is provided in EP 1130-2-520.

(c) 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.

(d) Any declaration or offer of abandonment shall be acknowledged in writing. The reply shall not indicate in any way that the USACE is "accepting" abandonment or accepting responsibility/liability for the wreck. The "Sample Letter: Bill for Reimbursement" in EP 1130-2-520 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.

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

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

d. Emergency removal authority under "Section 20" of the River and Harbor Act of 1899, as amended (33 United States Code (USC 409 and 411-415), shall 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. 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.

e. In cases involving substantial threat to the human environment from pollution, the USCG may exercise its own authority to remove or destroy a vessel. Some of these cases may also involve a hazard to navigation (triggering USACE 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 USCG 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 USACE 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.

f. The District Commander may, upon request, provide assistance to the USCG in locating and/or marking a wreck. Assistance shall be provided if resources are available and if the USACE has a special capability in the particular case. Such assistance is normally not reimbursable from the USCG, unless the USCG recovers marking costs from the responsible party. In all cases, cost records shall be maintained for the possibility of later reimbursement (see 33 CFR 74). For more complete ownership information on U.S. documented vessels, the USCG documentation office shall be consulted for a copy of the Certificate of Ownership. When an owner or other responsible party undertakes removal, the USACE, or USCG if mutually agreed upon, shall monitor the operation, including the installation and maintenance of marking. The USACE shall not, however, enforce marking requirements. Marking problems shall be referred to the USCG for enforcement.

g. The USACE and the USCG 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 USCG for notification to the owner, the commander shall ensure that all the relevant elements of EP 1130-2-520 are addressed. Separate notifications may be made, but are discouraged as not reflecting well on Federal coordination.

h. District commanders shall keep the USCG 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 USACE, any pollution observed, and any other circumstances which may impact on navigational safety. Copies of correspondence to the owner shall also be provided to the USCG district. Conversely, district commanders should expect reciprocal notifications and copies of correspondence from the USCG.

4-4. Funding.

a. 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.

b. Funding for all USACE 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 shall be provided with the approval from CECW-OD.

c. Reimbursable costs (those which are recoverable from the owner/operator/lessee) shall

be all "reasonable" costs associated with marking and removal, including:

- (1) investigation of obstruction
- (2) preparation of plans/specifications
- (3) contract preparation
- (4) contract administration (USACE personnel)
- (5) cost to locate the wreck
- (6) direct removal costs (by contractor or USACE)
- (7) cost to maintain site safety during removal
- (8) overhead (for all hired labor) and equipment
- (9) disposal; and,
- (10) marking and maintenance of marking.

d. Non-reimbursable costs shall be 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) consultation with USCG
- (2) resolution of dispute with USCG; and,
- (3) internal USACE notifications and situation reports.

e. Cost recovery from the owner/operator/lessee shall be initiated by letter correspondence. Specific guidance on requests for reimbursement, liabilities, and legal actions involved is provided in EP 1130-2-520. Cost documentation shall be reviewed by counsel before submission to the responsible party for payment.