

**HOUSE . . . . . No. 4953**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Ten**  
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An Act relative to abandoned vessels..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of chapter 91 of the General Laws, as appearing in the 2008  
2 Official Edition, is hereby amended by inserting after the word “forty-three”, in line 10, the  
3 following:- , 43A, 43B, 43C.

4 SECTION 2. Said chapter 91, as so appearing, is hereby further amended by striking out  
5 sections 38 to 43, inclusive, and inserting in place thereof the following 10 sections:-

6 Section 38. As used in sections 38 to 48, inclusive, the following words shall, unless the  
7 context clearly requires otherwise, have the following meanings:—

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

14 “Certificate of number”, a document issued by the director stating the name and address  
15 of the owner and the number awarded to a vessel pursuant to this chapter, except such vessels,  
16 other than livery boats, owned by a manufacturer of, or dealer in, boats.

17 “Certificate of documentation number”, a document issued by the United States Coast  
18 Guard stating the name and address of the owner of a commercial vessel and the identification  
19 number awarded to a vessel pursuant to this chapter.

20 “Claimant”, the commonwealth, its political subdivisions, or any person or entity, public  
21 or private, which desires to acquire title to an abandoned vessel

22 “Department”, the department of conservation and recreation acting through the division  
23 of waterways.

24 “Director”, the director of the office of law enforcement within the executive office of  
25 energy and environmental affairs.

26 “Identification number”, the number awarded to a vessel pursuant to this chapter and  
27 upon approval of an application for a certificate of number or certificate of documentation  
28 number.

29 “Lienholder ”, a person or entity holding a lien on a vessel pursuant to generally accepted  
30 admiralty or maritime law.

31 “Office”, the office of law enforcement within the executive office of energy and  
32 environmental affairs.

33 “Operator”, a person who operates or who has a charge of the navigation or use of a  
34 vessel.

35           “Owner”, a person, other than a lienholder, holding title to a vessel; provided further, that  
36 the term shall include a person entitled to the use or possession of a vessel subject to an interest  
37 of another person, reserved or created by agreement and securing payment or performance of an  
38 obligation, but shall exclude a lessee under a lease not intended as a security interest.

39           “Person”, a natural person, corporation, association, partnership or other legal entity.

40           “Removal costs”, costs associated with the removal or destruction of any vessel from  
41 land or water including the reimbursement of any costs incurred by the claimant in the course of  
42 acquiring title to an abandoned vessel.

43           “Vessel”, a boat or watercraft of every description, motorized and non-motorized, except  
44 a seaplane on the water, used or capable of being used as a means of transportation on water  
45 including, but not limited to, documented boats and ships, flat bottomed boats, barges, scows and  
46 rafts and including all equipment, modes of power, and all property aboard the vessel.

47           Section 39. It shall be unlawful for any person to willfully abandon a vessel upon public  
48 land or the shores or waters of the commonwealth or upon private property or the water thereof  
49 adjacent to public land or the shores or waters of the commonwealth without the consent of the  
50 official designated by law to have jurisdiction over such public land or waterway, or the owner  
51 or other person in charge of the private property. Mooring, grounding or otherwise attaching or  
52 fastening a vessel upon public land or waterway or private property without consent for a period  
53 of more than 90 days shall constitute prima facie evidence of abandonment. A vessel that the  
54 owner, operator or lienholder has placed at a storage or repair facility, which is subject to the  
55 provisions of section 63, sections 179 or 180 of chapter 6, sections 26 to 27D, inclusive, of

56 chapter 9, section 14 of chapter 255 or any other applicable federal or state law, shall not be  
57 considered an abandoned vessel for purposes of this chapter.

58 Section 40. A claimant wishing to obtain title to a vessel abandoned upon public land or  
59 the shores or waters of the commonwealth or upon any private property or the water thereof  
60 adjacent to public land or the shores or waters of the commonwealth and not subject to the  
61 exclusive jurisdiction of the United States may apply to the office for title under the provisions of  
62 this section. If there is more than 1 claimant, the office shall give preference for the claim in the  
63 following order: (i) lienholders, in order of priority as determined by admiralty or maritime law;  
64 and (ii) the first of the following to file: the department, the office, another political subdivision  
65 of the commonwealth, the municipal government or jurisdiction wherein the vessel lies and the  
66 government of the United States of America or any political subdivision thereof. In no event  
67 shall preference be granted if emergency conditions exist and the procedures under this section  
68 would jeopardize navigation, public health or safety. In the event that there is more than 1 equal  
69 claimant, the office shall hold an auction, and the title, subject to valid liens as provided for  
70 hereunder, shall go to the highest bidder.

71 Prior to applying to the office for title pursuant to section 41, the claimant shall: (i) if the  
72 vessel has an identification number, a registration number, equipment numbers, a certificate of  
73 documentation number, a certificate of number or other means of identification, contact the  
74 office to determine if the vessel has been stolen; (ii) secure the owner's last known address and  
75 the address of any lienholder appearing on record if, after 30 days, the office determines that the  
76 vessel is abandoned and not stolen; provided that the claimant shall notify the owner, any known  
77 lienholder and the department by certified first class mail, return receipt requested, of the  
78 owner's, lienholder's or other party's, required by regulation, address of record ; and (iii) if the

79 owner of record does not reply within 30 days, the claimant shall cause a notice to appear for 3  
80 consecutive printings in a newspaper of general circulation published in the county, city or town  
81 of the owner's last known address, or if the owner's name and address are unavailable, where  
82 known lienholders have their place of business, or if no lienholder's name and address are  
83 known, where the vessel is located, provided that the notice shall include: (1) a description of the  
84 vessel and any identifying information; (2) a description of the location where the vessel is  
85 situated; (3) a statement informing the owner and any lienholder of their right to reclaim the  
86 vessel within 30 days subject to rights of any other lienholder; (4) a statement that failure to  
87 claim the vessel will constitute a waiver of all rights, title and interest in the vessel; and (5) a  
88 statement that if ownership or a lienholder interest is not claimed and the vessel is not removed  
89 within 90 days after the owner, the owner's agent or employee signs the return receipt or within  
90 90 days of the last day of notice by publication, whichever is later, the claimant may apply to the  
91 office for title to the vessel.

92 Section 41. If the owner or lienholder fails to claim the vessel within 90 days after the  
93 return receipt is received by the claimant or within 90 days of the last day of notice by  
94 publication, whichever is later, and if the commonwealth is not the owner pursuant to sections  
95 179 or 180 of chapter 6 or sections 26 to 27D, inclusive, of chapter 9, and if the United States is  
96 not the owner pursuant to federal law or regulation, the claimant may apply to the office for a  
97 title, subject to any lien which is valid and enforceable under any other statute, including section  
98 9 of chapter 106. The application shall include: (i) a notarized affidavit by the claimant stating  
99 that the vessel has been abandoned for at least 90 days, that all notice requirements pursuant to  
100 this chapter have been satisfied and that the vessel is not subject to said sections 179 or 180 of  
101 chapter 6 or said sections 26 to 27D, inclusive, of chapter 9 or the requirements of section 63, or

102 any other applicable state or federal law or regulation; (ii) if applicable, a copy of the letter to the  
103 identified owner and lienholders and accompanying return receipts; provided however, that in  
104 the alternative, the claimant may supply a detailed explanation of the unsuccessful steps taken to  
105 identify the owner and any lienholder and to secure the address of the owner or any lienholder ,  
106 including any returned notices; and (iii) in the case of notice by publication, original copies of  
107 the notice as published. The office shall certify that the claimant has met the requirements of this  
108 section, and such certification shall be included with the records of the granting of the title.

109           Section 42. Except as otherwise set forth in this chapter, or in sections 179 or 180 of  
110 chapter 6 or sections 26 to 27D, inclusive, of chapter 9, or any other applicable state or federal  
111 law, the office is hereby authorized to grant title to an abandoned vessel, and any contents  
112 therein, to a claimant. Upon certification as required pursuant to section 41, and upon payment of  
113 any fees or taxes due, the office shall issue the claimant title to the vessel. The applicant shall be  
114 responsible for all costs incurred in transferring title. If the claimant wishes to operate the vessel,  
115 the claimant shall, if required by law, register the vessel with the office in accordance with  
116 chapter 90B or document the vessel under the applicable federal requirements.

117           Section 43. After receiving title, the claimant may remove the vessel, destroy it or sell it.  
118 Removal costs shall be borne by the previous owner if that owner has been identified, and  
119 otherwise shall be borne by the claimant. If the new owner intends to destroy or otherwise  
120 dispose of the vessel, the new owner shall do so in compliance with all related state and federal  
121 statutes.

122           Section 43A. If an abandoned vessel, or an unlawful or unauthorized structure or thing is  
123 deposited or suffered to remain in the tide waters of the commonwealth, and if the department

124 deems it is, or is liable to cause or become, an obstruction to the safe and convenient navigation  
125 or other lawful use of such waters, the department shall move it or cause it to be removed, after  
126 which time the department may become a claimant and apply for title from the office, in  
127 accordance with sections 40 to 43, inclusive.

128 For a vessel that has been abandoned that does not pose an obstruction to the safe and  
129 convenient navigation or other lawful use of the tidewaters of the commonwealth, and for which  
130 no other claimant commences proceedings under this chapter within 60 days of the department  
131 having notice of the vessel, the department may become a claimant and apply for title from the  
132 office, in accordance with said sections 40 to 43, inclusive.

133 Section 43B. A person who willfully abandons a vessel shall be punished by a fine of not  
134 more than \$10,000, except where a vessel, scow, lighter or other structure is or has been  
135 grounded within the limits of a harbor or on the shores of the commonwealth by reason of  
136 accident, emergency, errors of navigation, or in order to prevent loss of life or the sinking of such  
137 vessel, scow, lighter or other structure.

138 Section 43C. A person who obtains or attempts to obtain title to a vessel through  
139 fraudulent means shall be punished by a fine of not more than \$1,000.

140 Section 43D. The department, in consultation with the office, shall promulgate such rules  
141 and regulations as necessary to carry out the provisions of sections 38 to 43C, inclusive.

142 SECTION 3. Section 49 of said chapter 91 is hereby repealed.

143 SECTION 4. Sections 72 and 73 of chapter 92 of the General Laws are hereby repealed.