



ABANDONED SHIPS

BY MARTY LOGAN

The recently delivered decision by the Environment Court in the case *Southland Regional Council v Gary Huggins* 5/3/09 raised some areas of interest in relation to the treatment of grounded, abandoned, and wrecked ships.

The Southland Regional Council (SRC) became aware in February 2008 that a yacht, the *Port Oxley*, was grounded at Thule Bay on Stewart Island. The *Port Oxley* had originally been damaged and grounded in a storm, however it had later been moved closer to the shore and was eventually mounted on keel blocks and secured with ropes to various structures on the land. The SRC issued the owner with an abatement notice under the Resource Management Act 1991 (RMA), on September 15, 2008 requiring that the owner to cease his unlawful occupation of the coastal marine area (CMA).

The SRC is possibly the only regional council (having briefly looked at some other RC plans) to specifically address the occupation of the CMA by sunken, grounded, or abandoned ships. According to the SRC's resource planning coastal plan, the reason for this is that occasionally ships sink or are grounded, or abandoned in the CMA either deliberately or as a result of an accident. Apparently in most cases they are removed but there have been instances where the owner decides to leave

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the sunken or grounded ship where it is and the CMA is used as a convenient dumping ground for ships that are no longer seaworthy. As leaving a ship on the bed of the coastal marine area is an occupation whether it is accidental or not, such use is not permitted under the RMA unless provided for by a rule in the Regional Coastal Plan or a resource consent.


The owner did not comply with the abatement notice so the council sought an enforcement order from the Environment Court under section 314(1)(b) of the RMA requiring the respondent to 'remove the yacht named *Port Oxley* from the South coastal marine area at Thule Bay, Stewart Island in order to ensure compliance with rule 10.3.1 of the Regional Coastal Plan for Southland'. The Council also sought orders preventing the yacht being removed to any other place in the CMA of Stewart Island without the permission of the director of environmental management of the Southland Regional Council, and that the orders be complied with by December 31, 2008. The owner opposed the orders but conceded there had been a contravention of the rule.

There was an issue as to the enforceability of the orders requested. The main issue related to the legality of the requirement that the owner remove the boat from the CMA altogether, and not remove it to some other part of the CMA without consent. The rule applies only to boats/ships that are sunken, grounded or abandoned and are occupying the CMA. Because the *Port Oxley* would no longer be in contravention of the rule once it was refloated (being that it is no longer grounded) the court refused to make such an order, and the order was amended to read instead that the boat be removed from the beach.

If a vessel is abandoned within harbour limits then powers may also be exercised under the Harbours Act 1950. In *Carter v Ports of Auckland* [2004] 3 NZLR 262 (HC), the port authority exercised powers of seizure and sale under the Harbours Act, on the basis that the owners had abandoned the vessel.

In another similar case from 1998 (*Dorn v MSA* 22/9/99, CA300/98), the stranding of the ship Otago was dealt with by the Maritime Safety Authority under s110(1) of the Maritime Transport Act 1994. While most provisions in the MTA relating to wrecks have since been repealed (in 1999), section 110 still stands, although it has been amended.

Under the current section 110, the director may cause to be removed any ship that is wrecked, stranded, or in distress at any place on, over or near the coasts of New Zealand, or any derelict ship, if the owner of the ship has not made arrangements to remove the hazard and the director considers the vessel is a hazard to navigation. At the time of the *Dorn* decision the section gave the director of MSA (as it then was) jurisdiction of a vessel abandoned outside harbour limits. However the section now only applies where no regional council has jurisdiction over the waters or place where the hazard is located. As the jurisdiction of the various regional councils in New Zealand covers the entire coastline of New Zealand out to the 12nm limit this section will probably have limited application. Under section 110, if the Director notifies the owner of the ship that he or she considers that the ship is a hazard to navigation then the owner must make arrangements to secure and remove it. If this section is not invoked, there does not appear to be any legal obligation to remove a vessel when it is outside a regional councils jurisdiction.

While other councils' plans contain provisions relating to occupation of the CMA, the SRC's are specific to grounded, abandoned or wrecked ships, which makes it easier for them to require removal in such cases. The Director only appears to have powers when there is a navigation hazard, outside regional council jurisdictions. 

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