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ABANDONED SHIP!: LEGAL APPROACHES TO SOUTH CAROLINA'S DERELICT VESSEL PROBLEM

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I. Introduction

For many years, boat tours through South Carolina's coastal waterways have carried passengers past abandoned boats. One large cabin cruiser remained moored in the marsh grass off the coast of Folly Beach in Charleston County for so long that a spray-painting vandal with a sense of humor tagged it the S. S. *588 Minnow, after the wreck that marooned the characters on the television show *Gilligan's Island*.¹ The quaint vessel with the quirky nickname remained stranded for many years and served as a campy landmark until it was recently removed.²

Most abandoned vessels, however, are not so quaint, and their number has increased dramatically in the last few years.³ These boats must be removed from the waterways to remedy a variety of problems ranging from navigational issues to public health

and environmental concerns.⁴ The removal process is costly, estimated at an average of \$8,000 to \$10,000 per vessel.⁵ Because the owners of the vessels are often unidentifiable,⁶ the removal costs fall to one of several governmental bodies and, therefore, the taxpayers.⁷

South Carolina officials have long been aware of the issue of abandoned vessels, as evidenced by legislation dating back to the eighteenth century⁸ and by the General Assembly's recent passage⁸ of amendments to South Carolina Code section 50-21-190.⁹ Despite their long-standing awareness of the issue, however, South Carolina officials have not yet achieved an efficient method of regulation. Although current counts of abandoned or derelict vessels vary widely,¹⁰ the state's level of problematic marine debris--especially when considered in proportion to its length of coastline--ranks among the nation's highest.¹¹ The increase in abandoned vessels and the corresponding high cost of *589 removal have prompted new legislation or amendments to existing legislation in many of the coastal states facing the problem.¹²

South Carolina has removal programs in place, and the state legislature recently increased the amount it can fine individuals who abandon their watercraft to \$5,000.¹³ However, the current system is ineffective in that it does not facilitate efficient abandoned vessel cleanup, allocate the cost of removal effectively, or discourage abandonment. This Comment asserts that regulatory changes are needed to ensure that the appropriate parties are paying the cost to remedy and ultimately eliminate this expensive and challenging problem. Part II examines the history and extent of the abandoned vessel problem, including a consideration of its costs. Part III chronicles the ineffective approaches that state law utilizes in attempting to fight the problem and the strengths and weaknesses of existing remedial measures. Finally, Part IV proposes possible solutions for combating this growing problem in South Carolina, including clarification, consolidation, and better enforcement of existing measures; an abatement or amnesty program; and increased partnerships among the various public and private entities involved in the regulatory scheme.

Because this Comment focuses on who should bear legal responsibility for the removal of abandoned vessels, it does not discuss admiralty law governing the process of claiming abandoned vessels, except insofar as private solutions may provide a viable option for abandoned vessel abatement. Similarly, this Comment does not address the prevalence of insurance fraud in the context of abandoned vessels, nor does it discuss marine debris resulting from natural disasters that becomes the responsibility of the Federal Emergency Management Agency (FEMA).

II. Background

A. Abandoned and Derelict Vessels and Marine Debris

The National Oceanic Atmospheric Administration (NOAA) defines marine debris as “any persistent solid material that is manufactured or processed and [is] *590 directly or indirectly, intentionally or unintentionally, disposed of or abandoned into the marine environment or the Great Lakes.”¹⁴ Marine debris includes both land-based and ocean-based debris, ranging from household trash that enters coastal waters through storm drains to commercial fishing equipment lost from sea vessels.¹⁵ In fact, vessels themselves qualify as marine debris when abandoned or sunken.¹⁶ In protected areas, abandoned vessels may remain intact for years, while stationary vessels in exposed areas are likely to disintegrate more quickly, resulting in debris fragments that are more easily spread among submerged habitats and along the shore.¹⁷ The training manual for South Carolina's citizen debris spotters, published by the coalition of state agencies that share jurisdiction over the issue of abandoned vessels,¹⁸ asks volunteers to organize marine debris into one of four categories: abandoned vessels, large debris, fishing nets, or derelict crab traps.¹⁹ Though “marine debris” is an umbrella term, abandoned vessels deserve unique analysis because they are dynamic--the equipment and expertise required for their removal changes as the vessels gradually deteriorate. An intact vessel poses different problems than a dilapidated one, just as large debris necessitates a different removal process than small debris.

The South Carolina Code defines the variety of marine equipment that causes potential problems when abandoned. A “boat” or “vessel,” terms which are interchangeable in the code,²⁰ is any watercraft “capable of being used as a means of transportation on the water,”²¹ excluding “a seaplane regulated by the federal government, water skis, aquaplanes, surfboards, windsurfers, tubes, rafts, and similar devices” along with any craft that is not subject to state or federal construction or operational standards.²² While abandoned vessels are the primary focus of this Comment, the efficiency recommendations presented in the ensuing Parts also apply to other types of marine debris, such as derelict crab traps,²³ that are encompassed by the same regulatory scheme.

***591 B. Abandonment**

In the spring of 2010, a group of College of Charleston students rescued a sinking yacht by boarding it after the panicked captain radioed, “Mayday, mayday, mayday.”²⁴ By doing so, the captain “broke a cardinal rule,”²⁵ as one of the students put it, because in radioing that distress call, the captain technically abandoned the vessel.²⁶

The existing state regulatory scheme contains differing definitions of abandoned vessels. The statutory definition of “abandon” or “abandoned” is found in the South Carolina Boating and Safety Act of 1999.²⁷ Under the Act, an abandoned watercraft is “any watercraft that has been moored, stranded, wrecked, sinking, or sunk, and has been left unattended for longer than forty-five days,” excluding a watercraft that “is legally moored or is on private property.”²⁸ Similarly, the Act prohibits “abandon[ing] a watercraft or outboard motor on the public lands or waters of this State or on private property without permission of the property owner” unless abandonment was necessary for the occupants’ safety during an emergency and the boat’s owner makes a bona fide recovery attempt when the emergency has passed.²⁹

The South Carolina Department of Health and Environmental Control (DHEC) provides a second definition of abandoned vessels that expands upon the statutory definition by including structures in certain environmentally vulnerable areas and encompassing “[a]ny boat, barge, dock, pier or other structure/vessel in the [vulnerable] areas that is no longer functional for its primary, intended purpose and for which repair or salvage activity is not actively being pursued.”³⁰

A third formulation of the definition appears in the training manual published by the coalition of agencies charged with monitoring abandoned vessels and other marine debris. The manual describes abandoned vessels as “[f]loating, sunken, partially sunken, or stranded boats that have been abandoned and do not show any signs of being actively maintained.”³¹ The manual also includes “[l]arge pieces of vessels that have broken up” in the abandoned vessel category.³²

Further confusing the definitional scheme are city ordinances that prescribe varying lengths of time before a vessel is considered abandoned, such as that of *592 the City of Beaufort, in which the vessel is ripe for seizure after being unoccupied for seven consecutive days.³³

Clearly, many governmental bodies participate in enforcing abandoned vessel laws. However, the definitions they provide are inconsistent. This multi-faceted regulatory scheme, with the interplay of the multiple bureaucratic entities participating in it and the overlap in their responsibilities, is incoherent and inefficient.

C. Reasons for Abandonment of Watercraft

There are a multitude of reasons to abandon a vessel. Some boats are abandoned because their owners can no longer afford to service their debt or pay maintenance and upkeep costs.³⁴ Other reasons include weather-related events, accidental groundings, and the decline in the commercial shrimping and fishing industries.³⁵

Last year, DHEC's Office of Ocean and Coastal Resource Management (OCRM) conducted three focus group meetings in Georgetown, Charleston, and Beaufort Counties concerning marine debris.³⁶ The summary report of those meetings reflects geographical variations in the type of marine debris and abandoned vessels and in the motivations for abandonment.³⁷ The focus groups identified the primary challenge facing the Georgetown area as abandoned and derelict river shacks and the primary problem facing Charleston as lack of mooring laws.³⁸ The problematic vessels in Beaufort were commercial fishing boats, a trend "thought to be the result of economic hardship due to rising operating costs and low shrimp prices."³⁹ The Beaufort focus group also identified abandoned crab traps as a problem--a concern that was not present in Georgetown or Charleston.⁴⁰

In addition to economic reasons for abandonment, other reasons include storms, accidents, and obsolescence.⁴¹ One example comes from the Rector family, who for many years operated a commercial shrimping business out of *593 Shem Creek in Charleston.⁴² Recently, when a buoy damaged the Rectors' trawler during a routine outing, the family could not afford to repair the boat and had to allow the United States Coast Guard to undertake removal efforts because the 62-foot vessel was submerged in a navigational channel.⁴³ The Rector family's story demonstrates the individualized nature of the abandoned vessel problem and why the current statutory approach is not an effective solution for a problem with so many variables. A struggling family business whose boat was damaged accidentally does not have the same degree of culpability as a wealthy individual who chooses no longer to maintain an expensive "toy" and intentionally abandons it. Moreover, though the focus groups provide some insight into what citizens view as the various motives for abandonment, when the owner of an abandoned vessel cannot even be identified, any attempt to determine the reasons for desertion is mere conjecture. Deterrence cannot be effective when the motives for abandonment are so nebulous.

D. Extent of the Problem

Even with the best coordinated effort of agencies, municipalities, and individual citizens, an accurate and precise tally of abandoned vessels and other marine debris in South Carolina's waterways at any one time is practically impossible. The lack of an accurate count is problematic for three reasons: (1) progress is extremely difficult to track without an accurate starting point; (2) inaccurate counts make any budget projections for cleanup efforts a guessing game; and (3) public awareness of the problem is difficult without a reliable figure reflecting its extent. Furthermore, federal grants provide the primary funding for cleanup efforts, and grants are conditioned on reliable data about cleanup efforts and goals.⁴⁴ Problems with identifying and counting abandoned vessels exist because people who abandon vessels do not self-report and often strip the vessels of identifying marks.⁴⁵ Because any study takes time to compile and because additional vessels are easily abandoned, any count of abandoned vessels is likely rendered immediately obsolete because the number is constantly changing. Although in rare instances private salvors may successfully remove vessels, thereby reducing the count, the high cost of doing so⁴⁶ means that vessels are presumably abandoned more often than abandoned ones are salvaged. *594 Additionally, some of the derelict vessels are submerged or decay so much during the period of their abandonment that they fall apart and sink.

The South Carolina Department of Natural Resources (SCDNR) has undertaken an effort to identify the scope of the abandoned vessel problem,⁴⁷ but the results are imprecise. SCDNR reported "about 200 abandoned boats" in April 2009,⁴⁸ and OCRM estimated "between 100 and 200"⁴⁹ remained in July 2010, in addition to 80 that had already been removed.⁵⁰ When the Folly Beach mayor and other city officials took a boat trip in December 2008 to determine the order of removal for abandoned vessels in the area, they spotted several newly abandoned boats in addition to the sixteen they were already aware of.⁵¹ This anecdote is one demonstration of the rapid rate of increase in the abandoned vessel count that is likely present in municipalities all along South Carolina's coastline. The Folly Beach example further suggests that the master counts do not account for the rapid growth in abandoned vessel numbers and demonstrates the difficulty in obtaining an accurate total.

One reason the counts are inconsistent is that reports of abandoned crafts come from numerous sources, while removal falls to individual municipal and county governments that often lack adequate manpower and finances.⁵² Because governmental organizations have experienced decreases in funding, nonprofit organizations, other non-governmental entities, and individuals have attempted to shoulder some of the workload. Perhaps realizing its own limitations, OCRM includes on its website a reporting form and instructional rubric for citizen surveyors, or “spotters,”⁵³ to report abandoned vessels.⁵⁴ One environmental nonprofit organization, Charleston Waterkeeper, employs user-friendly technology on its website to advance a similar citizen-participation initiative to identify and catalog abandoned vessels.⁵⁵ This is done through the use of an interactive map to mark the locations of abandoned vessels.⁵⁶ The map was received enthusiastically; thirty abandoned vessels were identified in the first two days that it was posted.⁵⁷

***595 E. Costs of the Current Problem**

In addition to the high financial cost of South Carolina's abandoned vessel problem, other potentially debilitating costs associated with the problem include negative impacts on public health, marine ecosystems, navigation, and tourism.⁵⁸

1. Financial Costs

The abandoned vessel problem is a difficult one to remedy due to the high costs of removal. Because each vessel is different and presents unique challenges in removal, accurate estimates of removal costs are difficult to obtain; however, reports estimate the cost of removal to be between \$8,000 and \$10,000 per boat.⁵⁹ Factors to consider in estimating the cost of removal include the duration of abandonment, the size and condition of the vessel, and the nature of its cargo. Moreover, the \$5,000 fine, when levied, would only offset about half of the estimated removal costs for one vessel. Additionally, the offset only occurs when the owner of an abandoned vessel can be identified, when the owner is able to pay, and when the statute is actually enforced.

2. Other Costs

In addition to the financial costs of removal, abandoned vessels create other costs. Environmental costs include the potential negative impact on marine wildlife, the destruction of wetlands and other marine habitats, and the impact on the environment by hazardous materials contained in abandoned vessels.⁶⁰ The same elements that can damage the marine environment can also adversely impact human health and safety.⁶¹ Furthermore, abandoned vessels and the dangerous boat fragments that result from deterioration can create navigational hazards.⁶² Marine debris is also unsightly and, if left unchecked, could damage South Carolina's vital tourism economy.⁶³

***596 III. Analysis of Current Law**

A. Status Quo

The current allocation of responsibility for the identification and removal of abandoned vessels, as well as for enforcement of existing statutes and regulations, has created an elaborate web of confusion. State and federal agencies, as well as county and municipal governments, carry responsibility for some degree of monitoring and remedying the abandoned vessel problem. The current coalition of OCRM, SCDNR, the Coast Guard, and the U.S. Army Corps of Engineers was established in 2004,⁶⁴ and although they have had some success in managing the abandoned vessel problem in the years since,⁶⁵ there are areas for improvement. Furthermore, their efforts lack a recurring funding source,⁶⁶ which means that any advancements made in recent years are on tenuous footing.

1. Federal Involvement through Legislation and Agencies

Federal legislation on marine salvage exists--namely the Abandoned Shipwreck Act of 1987⁶⁷ and the National Marine Sanctuaries Act⁶⁸--but it focuses mainly on substantive admiralty law, like the law of finds,⁶⁹ and thus does not fall within the scope of this Comment. Similarly, courts have not frequently invoked the Salvage Convention of 1989⁷⁰ (though it theoretically governs abandoned vessels)⁷¹ and its application triggers much confusion--partially due to the continuing impact of the Salvage Convention of 1910,⁷² to which the United States is a party.⁷³ Other federal legislation may apply, including provisions of the Rivers and Harbors Appropriation Act of 1899,⁷⁴ the *597 Clean Vessel Act of 1992,⁷⁵ and the Clean Water Act of 1977.⁷⁶ However, the application of these overlapping federal laws to the multi-agency abandoned vessel process in South Carolina is problematic.

Despite NOAA's interest in getting all abandoned and derelict vessels out of the waterways, the agency is required to focus first on what its staff designates as the most dire threats.⁷⁷ NOAA has cartographers who locate and map abandoned vessels so that safe nautical travel can continue, while NOAA's Office of Response and Restoration analyzes the pollution threats posed by the abandoned vessels.⁷⁸ Yet another NOAA office, the Fisheries Service, responds to "entanglement hazards and debris removal from vessels."⁷⁹ Despite these activities, however, NOAA does not typically remove or otherwise address the derelict vessel itself, except when the vessel in question is grounded in a National Marine Sanctuary.⁸⁰ Although NOAA may not be vested with adequate authority to engage in vessel removal,⁸¹ it is able to provide funding for state-level removal programs, as it does for South Carolina.⁸²

The federal entity most likely to play a role in abandoned vessel removal in South Carolina is the Coast Guard. However, the Coast Guard's involvement is usually limited to situations in which fuel or other hazardous materials remain on the vessel--and even then, the Coast Guard's activity is limited to removing those materials; it does not remove the watercraft.⁸³

If the abandoned vessel or debris is in a navigational channel, the Army Corps of Engineers has jurisdiction.⁸⁴ The Corps merely "requires" removal,⁸⁵ which does not necessarily mean that it will undertake to remove abandoned vessels. Therefore, despite the potential for involvement by the Coast Guard or Army Corps of Engineers, most of the responsibility for removal does not fall on the federal government, whose principal involvement in the process is limited to funding state agencies through NOAA.

2. State Regulation

Even where state agencies or local government entities involved in the marine debris program are identifiable, their respective responsibilities for *598 removal, not to mention for public awareness and prevention, are unclear. Responsibility for removal depends on several factors, including the location of the vessel or debris and whether the owner of the vessel or debris is identifiable.⁸⁶ Depending on the facts, an abandoned vessel may be dealt with through the channels of an administrative agency, a civil enforcement process, or a criminal enforcement process.⁸⁷

a. Known or Traceable Owners

i. Regulations and Civil Enforcement Process

Abandoned vessels located outside of the navigational channel are not under federal jurisdiction and fall under the regulatory schemes of either OCRM or SCDNR.⁸⁸ For removal purposes, the determination of which agency governs hinges on whether the owner of the abandoned vessel is known or traceable.⁸⁹

If the owner is known, OCRM requires removal,⁹⁰ and if the vessel is in a critical area, the civil enforcement process may be triggered, imposing the cost of removal on the owner.⁹¹ OCRM decides whether vessels or structures in a critical area are abandoned and whether they should be removed.⁹²

Abandoned vessels in a navigational channel may fall within SCDNR's scope if they lack nighttime running lights or violate regulations requiring vessel registration.⁹³ Moreover, these violations may ignite the criminal enforcement process.⁹⁴

ii. Statutes and Criminal Enforcement Process

South Carolina Code section 50-21-190 provides the criminal penalties and removal process for abandoned watercraft or outboard motors. Subsection (A) provides that abandoning a watercraft or outboard motor in public waters or on public land, or on private property without the owner's consent, is unlawful, *599 except for abandonment in emergency situations.⁹⁵ The South Carolina Code defines "abandoned" watercraft as "any watercraft that has been moored, stranded, wrecked, sinking, or sunk, and has been left unattended for longer than forty-five days,"⁹⁶ and a recent amendment to the statute specifies that SCDNR must conduct investigations to determine if watercraft qualifies as abandoned.⁹⁷

A convicted owner must remove the vessel within fourteen days of conviction and also faces either a fine ranging from \$1,000 to \$5,000 or incarceration for up to thirty days, or both.⁹⁸

Magistrates and municipal courts exercise enforcement jurisdiction under this statute,⁹⁹ and municipalities also pass local ordinances to combat the problem. For example, Mount Pleasant has an ordinance that largely mirrors section 50-21-190(B).¹⁰⁰ The City of Georgetown enacted an ordinance that gives the city and police officers the authority to remove abandoned vessels to a place of the city's choosing,¹⁰¹ and the City of Beaufort passed an ordinance that requires removal of abandoned vessels at the owners' expense.¹⁰²

b. Unknown or Untraceable Owners

i. Statutes

SCDNR may seize an abandoned vessel when no owner can be located, or when a vessel's identifying numbers have been "destroyed, removed, covered, altered, or defaced."¹⁰³ If, after sixty days, the department has not located an owner and no person claiming an interest in the vessel has filed an action to *600 prove his interest, it "may retain the property for official use or transfer the property to another public entity for official use, sell the property at public auction, or . . . destroy it."¹⁰⁴

ii. Private Salvors as One Source of Abatement

Private salvage efforts organized within the existing scheme could potentially be an efficient removal option. Salvage statutes provide guidelines to would-be salvors about the process by which they can purchase unclaimed stranded goods.¹⁰⁵ Also, OCRM regulations allow that "[a]bandoned boats, barges, or other watercraft whose ownership cannot be established may be removed from [a] critical area by any person, at their expense."¹⁰⁶ If OCRM determines that the process of removal will have a significant impact on the marsh environment, however, it may require the salvor to petition its office for a permit.¹⁰⁷ Although private salvage allows for people to remediate the total loss of abandoned and derelict vessels, ill-equipped individual salvors could generate a new set of problems. The amendment to section 50-21-190 may unintentionally exacerbate this problem because it appears to allow private salvors to claim vessels that have been abandoned for ninety days, but does not provide

regulations to ensure efficient and safe salvage.¹⁰⁸ Vessels that have been abandoned for at least ninety days may have deteriorated substantially and may present a difficult and potentially dangerous removal process for salvors.

3. Problems with the Current System

The South Carolina statutory and regulatory scheme governing abandoned vessels is inadequate, confusing, and under-enforced. Even if properly enforced, the existing scheme is not sufficient to handle the growing number of derelict vessels littering the state's waterways. Furthermore, the current legal framework is far from clear about individuals' and agencies' rights and responsibilities.¹⁰⁹ *601 With inconsistent federal involvement, inadequate funding, and an inability even to measure the true extent of the problem, the coalition of agencies is faced with a seemingly insurmountable task.

Though the system for penalizing known owners of abandoned vessels has received recent attention from the legislature, resulting in a sizeable fine increase, all an owner usually has to do to circumvent the system is to destroy the vessel's serial number. Additionally, even though the maximum amount of the fine recently increased to five thousand dollars, that amount is still well below the average cost of removal of a recreational vessel.

4. Successes in the Current System

Despite these shortcomings, the existing system has some commendable aspects. The well-established partnership of agencies working together to solve the abandoned vessel and marine debris problem plaguing South Carolina's waterways has been and will be crucial to any success in this endeavor. The cooperative effort, formally solidified in 2004,¹¹⁰ seems particularly suited to the recent budget problems plaguing the state and the nation over the last few years.

B. Successes from Other Jurisdictions

In 2009, California amended its abandoned vessel laws by allowing for would-be abandoners to voluntarily surrender their vessels without threat of penalty.¹¹¹ Under this law, a surrendered vessel is "a recreational vessel that the verified titleholder has willingly surrendered to a willing public agency."¹¹² To receive protection, the public agency must determine that the vessel is in danger of being abandoned, therefore having "a likelihood of causing environmental degradation or becoming a hazard to navigation";¹¹³ moreover, the public agency's decision to accept the surrendered vessel must be based solely on these criteria.¹¹⁴ The California statute also provides a funding source for removal of abandoned and derelict vessels because it allocates eighty percent of recovered fines to a special fund called the Abandoned Watercraft Abatement Fund.¹¹⁵ Local agencies apply to this fund for financial assistance for removal projects.¹¹⁶ Considerations in the grant review process include whether a local agency applying for a grant has implemented an active enforcement program and a "submerged navigational hazard abatement plan at the local level that provides *602 for the control or abatement of water hazards."¹¹⁷ The largest apparent benefit of the California approach is precisely what is lacking in South Carolina--reliable and available funding.

Massachusetts recently responded to increased rates of abandoned vessels by raising its fine for abandonment to \$10,000.¹¹⁸ Although this amount would defray the average cost of removing an abandoned vessel, it would not contribute to a recurring funding source for the removal of abandoned vessels with untraceable owners.

Florida's approach does create a recurring funding source through the levying of a tax on a group of coastal counties,¹¹⁹ "where a small millage for all property owners in the coastal counties goes to pay for coastal issues, including removing the boats, beach renourishment and other programs."¹²⁰ The statute vests the member counties with general authority to pursue inlet management projects and programs "intended to alleviate the problems associated with its waterway or waterways;"¹²¹ this

authority logically appears to encompass abandoned vessel removal. The millage is used to pay marine contractors to remove abandoned vessels at a discounted rate.¹²²

IV. Recommendations

The following recommendations are based on the premise that responsibility for bearing the cost of removing abandoned vessels should rest with the wrongdoers, meaning the owners and operators of abandoned vessels.

A. Better Enforcement of Existing Measures

The existing statutes and regulations have some merit, and heightened enforcement could yield positive results in ensuring that the wrongdoers bear the costs of removing abandoned vessels. Key among the existing measures is the new, higher maximum fine of \$5,000.¹²³ The first step in making the new fine effective is to promote awareness of it--but even if this is done, the amount is still too low. The fine should be at least as high as the average cost of removal for an abandoned vessel.¹²⁴ This would follow the Massachusetts model discussed above.

*603 B. Clarification and Consolidation of Existing Measures

In addition to better enforcement of existing measures, the state must implement new measures to reduce confusion and properly allocate responsibility. The General Assembly's recent amendments to section 50-21-190 reflect the seriousness of this problem and suggest that the enforcing agencies are aware of the current scheme's limitations. However, the recent amendment will not solve the majority of problems identified in this Comment and, in fact, may increase confusion in determining which agencies have jurisdiction and which will actually undertake removal and disposal.

One positive effect of this amendment will empower municipalities, who are among the agencies with jurisdiction over the abandoned vessels in their waterways, with authority to remove and dispose of derelict vessels without having to pass local measures to that effect.¹²⁵ However, because the statute requires SCDNR to identify vessels as abandoned,¹²⁶ it does not allow for the type of delegation to municipalities that is necessary for efficient removal.

Additional problems may arise from the vague investigation requirement,¹²⁷ the increased notification responsibilities,¹²⁸ and the forty-five day period during which the owner can claim his or her vessel.¹²⁹ These provisions extend the length of time that an abandoned vessel must sit on the waterways before it can be removed. Furthermore, the amendments may invalidate local ordinances through which municipalities could take action more quickly than the amended statute allows.¹³⁰

The relevant laws and regulations should be integrated, uniformly updated, and published in a centralized, accessible location. The most logical point at which to educate boat owners and operators and to promote awareness of both the statute and the abandoned vessel problem is at the registration and titling phase. Because SCDNR is the agency that oversees watercraft registration in South Carolina,¹³¹ it likely is best suited to inform boat owners of the importance of complying with abandoned vessel statutes and regulations. Also, the penalties for boating with expired registration and for transferring ownership without re-registration should be increased, because better compliance with these existing *604 laws would probably alleviate some of the difficulty in tracking down unknown owners of abandoned vessels. Furthermore, the risks that abandoned vessels pose should be a central part of every boater safety course.

A principal benefit of a clearer, centralized abandoned vessel abatement process is less confusion. One option, promoted by the National Association of State Boating Law Administrators, is to create a model act that imposes penalties and fines and

provides funding for removal of vessels with unidentifiable owners.¹³² If consolidation is not practical, perhaps the primary responsibilities of raising awareness, prevention, removal, and remediation should be allocated among the agencies.

C. New Measures

In searching for ways to better enforce existing measures, municipalities have proposed new measures in the form of mooring fields and harbormasters. For instance, Beaufort City Council recently instructed its city manager to obtain state approval to create a mooring field “where each boat would be required to tie to a mooring ball or be removed.”¹³³ The creation of a mooring field would provide an enforcement mechanism for an existing ordinance that allows anchored or grounded vessels to be removed if they are unoccupied for more than a week.¹³⁴

The Folly Beach mayor has expressed his desire to employ a harbormaster, who would be charged with monitoring locally moored and anchored boats, communicating with boat owners, and encouraging timely maintenance and storm preparedness.¹³⁵ The warm climate in South Carolina allows boats to remain in the water all year, continuously exposing them to the elements. Harbormasters and mooring fields would institute accountability, forcing owners to perform routine maintenance.¹³⁶

Furthermore, a well-informed harbormaster would be in a good position to advertise boats available for private salvage as soon as they are deemed abandoned, thereby facilitating an organized, effective private salvor effort before the decay process advances. A mooring field might not provide the ultimate solution, but it could assist with enforcement efforts and potentially would be relatively easy and inexpensive to implement.

***605 D. Amnesty**

To make existing disposal options more attractive and more feasible, South Carolina should consider an amnesty program. In a state with abundant opportunity for marine recreation and ownership, one option is either to create an outlet for charitable donation of boats or to endorse an existing one. The National Kidney Foundation's well-known car donation program has been in operation for more than twenty-five years,¹³⁷ and the Foundation's website indicates that it also accepts boat donations.¹³⁸ Particular requirements for boat donations are not provided. However, some of the car donation requirements likely apply to boats, including that the donor hold clear title; that the donor disclose structural defects; and that the donation be whole.¹³⁹ Perhaps there is also demand for a financial incentive to encourage South Carolina boat manufacturers to recycle or refurbish boat parts and even sell the salvaged or would-be abandoned vessels.

E. Partnerships

The option with perhaps the most potential is one that the coalition of agencies is currently pursuing: governmental entities are working with private and nonprofit organizations to combat the problem of abandoned vessels. The relationships among coastal municipalities is especially ripe for partnership because not only do they share the waterways and the burden of this problem, but they are often competing for funding from the same sources. Through the pooling of resources and the sharing of knowledge and experience, the combined efforts of a partnership could facilitate increased effectiveness in prevention, detection, and remediation of the abandoned vessel problem without waiting on any of the involved agencies to effect change.

Increased collaboration is likely the most feasible option for South Carolina and potentially one with immediate, tangible results. For example, Charleston Waterkeeper tapped its broad support base to develop and release a free iPhone application that simplifies the process of reporting abandoned vessels.¹⁴⁰ Among other features, the application allows users simply to take a photo with the iPhone's camera and select the “Report an Incident” option.¹⁴¹ This action sends the abandoned vessel's photo

and coordinates from the phone's internal global *606 positioning system directly to the Charleston Waterkeeper's database and marks the location on the crowdsourcing map.¹⁴² Charleston Waterkeeper, through its utilization of existing free technology, its creation of new technology, and its effective organization of enthusiastic community participants, has not only equipped the existing players with new tools, but it has primed the pump for future partnership and innovation. The current scheme's inefficiency in placing abandoned vessel removal costs on innocent parties is illuminated when compared to the centralized effort of a partnership that builds on the successes of citizen involvement, increased public awareness, and the rise of proactive municipalities. An amnesty program, as discussed above, could serve as a complementary feature.

V. Conclusion

In examining the background, costs, and current state of South Carolina's abandoned and derelict vessel problem, this Comment has sought to show that current law is ineffective and that regulatory changes are needed to ensure that the appropriate parties are paying the cost to remedy this problem. The proposed solutions of clarification; consolidation and better enforcement of existing measures; an abatement or amnesty program; and increased partnerships among the public and private entities involved in the regulatory scheme are some options that would be easy and inexpensive to implement immediately. However, until major systemic changes in education, awareness, and the law take place, combating the problem of abandoned vessels will continue to pose major challenges.

Footnotes

- 1 Schuyler Kropf, *Folly Targets Wrecks*, *Post & Courier* (Charleston, S.C.), Aug. 16, 2008, at 1A.
- 2 See *Issues: Abandoned Boats*, Charleston Waterkeeper, <http://charlestonwaterkeeper.wordpress.com/issues> (last visited May 17, 2011) (follow "View Larger Map" hyperlink; then follow "REMOVED SS Minnow" hyperlink) (demonstrating that the boat was removed by June 11, 2009).
- 3 David Streitfeld, *Too Costly to Keep, Boats Become Castaways*, *N.Y. Times*, Apr. 1, 2009, at A1.
- 4 See S.C. Dep't of Health & Env'tl. Control, *Marine Debris Monitor Training Manual 3-4* (2010) [hereinafter *Training Manual*], available at http://www.scdhec.gov/environment/ocrm/docs/debris/MD_Monitor_Manual.pdf.
- 5 Kropf, *supra* note 1, at 7A.
- 6 See Kropf, *supra* note 1, at 1A ("No one knows who the owners are. Serial and registration numbers are gone or blurred, and the sales path can't be traced.").
- 7 Liz Mitchell, *DNR Finds 200 Abandoned Boats Along Coast*, *Island Packet* (Hilton Head, S.C.), Apr. 14, 2009, at 3A; Editorial, *Rid Waters of Abandoned Boats*, *Post & Courier* (Charleston, S.C.), July 19, 2010, at 10A.
- 8 An Act of Mar. 16, 1783, ch.6, 1783 S.C. Acts 550 (providing for the securing of shipwrecked and stranded property).
- 9 S.C. Code Ann. § 50-21-190 (2011), available at http://www.scstatehouse.gov/sess119_2011-2012/prever/3287_20110414.htm.
- 10 See *infra* Part II.D.
- 11 See Nat'l Oceanic & Atmospheric Admin. Office of Ocean & Coastal Res. Mgmt., *Coastal Zone Management Program--Enhancement Grant Assessments & Strategies: Marine and Lake Debris 1* (2006), available at http://coastalmanagement.noaa.gov/issues/docs/debris_summary.pdf.
- 12 Nat'l Ass'n of State Boating Law Adm'rs, *Best Mgmt. Practices (BMP) for Abandoned Boats* app. A (2009) [hereinafter *BMP*].
- 13 Prior to 2008, South Carolina did not have a statute specifically prohibiting the abandonment of watercraft. Section 50-23-135, which primarily concerned individuals who came to possess previously abandoned vessels, stated that "[a]n owner who abandons or junks a watercraft ... shall notify the [Department of Natural Resources] immediately in writing and deliver to it any title or, if the title is lost

or destroyed, a sworn statement of that fact within ten days of the abandonment.” S.C. Code Ann. § 50-23-135(A) (2008) (repealed 2008). The penalty for violating this provision was a maximum fine of \$200. S.C. Code Ann. § 50-23-280(A) (2008). On June 11, 2008, the General Assembly repealed section 50-23-135. Five days later, it approved section 50-21-190, which expressly prohibits the abandonment of a vessel. S.C. Code Ann. § 50-21-190(A) (Supp. 2010). Violation of the statute is considered a misdemeanor and the maximum fine for a person convicted is \$5,000. S.C. Code Ann. § 50-21-190(B) (Supp. 2010).

14 Training Manual, *supra* note 4, at 3.

15 *Id.*

16 *Id.*

17 *Id.*

18 The coalition members are the South Carolina Sea Grant Consortium, the South Carolina Department of Health and Environmental Control--Ocean & Coastal Resource Management, the South Carolina Department of Natural Resources, the Centers for Ocean Sciences Education Excellence SouthEast, the North Inlet-Winyah Bay National Estuarine Research Reserve, the South Carolina Aquarium, and the Charleston Waterkeeper. *Id.* at 1.

19 *Id.* at 10-11.

20 S.C. Code Ann. § 50-21-10(2) (Supp. 2010).

21 § 50-21-10(25).

22 § 50-21-10(28).

23 Derelict crab traps are governed by S.C. Code Ann. Regs. 123-21 (1992).

24 Matt Horton, Students on Spring Break Rescue Boat's Crew, Make Maritime Claim on Vessel, *Live5News.com* (Apr. 9, 2010, 8:08 AM), <http://www.live5news.com/Global/story.asp?S=12157963> (internal quotation marks omitted).

25 *Id.* (internal quotation marks omitted).

26 *Id.*

27 S.C. Code Ann. §§ 50-21-5, -10(1) (2008 & Supp. 2010).

28 § 50-21-10(1).

29 S.C. Code Ann. §50-21-190 (Supp. 2010).

30 S.C. Code Ann. Regs. 30-1(D)(1) (Supp. 2010).

31 Training Manual, *supra* note 4, at 10.

32 *Id.*

33 See Beaufort, S.C., Code of Ordinances ch. 4, § 8-4009 (2004).

34 See Streitfeld, *supra*note 3, at A1, A18.

35 See Christine L. Boring & Ian J. Zelo, Abandoned Small Vessels: State Perspectives on a Nationwide Issue, 2008 Int'l Oil Spill Conf.: 1071, 1072, available at <http://www.iosc.org/papers/2008%20182.pdf>.

36 Exploration of Regional Community Perspectives on Marie Debris: Attitudes, Opinions, Challenges & Opportunities, DHEC, 1, http://www.scdhec.gov/environment/ocrm/docs/debris/MD_Focus_Groups_Summary.pdf (last visited Mar. 16, 2011) [hereinafter Community Perspectives].

37 *Id.*

- 38 Id.
- 39 Id.
- 40 Id.
- 41 Nat'l Oceanic & Atmospheric Admin., Review of State Abandoned and Derelict Vessel Program 2 (2006).
- 42 See Bo Petersen, Shrimp Boat Salvage Set for Today, *Post & Courier* (Charleston, S.C.), Sept. 9, 2009, at 1B.
- 43 Id.
- 44 See, e.g., Announcement of Federal Funding Opportunity, Nat'l Oceanic & Atmospheric Admin., http://www.habitat.noaa.gov/pdf/fy_11_marine_debris_removal_project_funding.pdf (last visited Mar. 16, 2011) (stating that funded projects must have “specific, measurable objectives” and be able to “compar[e] pre-implementation targets to post-removal results”).
- 45 See Prentiss Findlay, Fighting Eyesores, Hazards, *Post & Courier* (Charleston, S.C.), Nov. 3, 2008, at 1B.
- 46 See *supra* text accompanying note 5.
- 47 See Mitchell, *supra* note 7, at 3A.
- 48 Id.
- 49 Editorial, *supra* note 7, at 10A.
- 50 See *id.*
- 51 See Edward C. Fennell, Folly to Clear Abandoned Boats, *Journal* (James Island, S.C.), Dec. 25, 2008, at 6A.
- 52 See Claudia Lauer & Vicki Grooms, Waterway Waste: Abandoned Boats Blemish Coast, *Sun News* (Myrtle Beach, S.C.), July 25, 2010, at 1A (quoting the Georgetown city manager as saying that “[i]n a time where local governments don't have money laying around to address this, ... \$5,000 or \$10,000 [is] hard to justify” (internal quotation marks omitted)).
- 53 See Training Manual, *supra* note 4, at 4.
- 54 Coastal Abandoned Vessel and Marine Debris Reporting Form, DHEC, <http://www.scdhec.gov/environment/ocrm/D-0984.asp> (last visited Mar. 16, 2011).
- 55 See Taking on the Abandoned Boats!, *Charleston Waterkeeper* (Mar. 4, 2009), <http://charlestonwaterkeeper.org/2009/03/04/taking-on-the-abandoned-boats/>.
- 56 See *id.*
- 57 Id.
- 58 See Training Manual, *supra* note 4, at 34?4.
- 59 Kropf, *supra* note 1, at 7A.
- 60 See Doug Helton & Ian Zelo, Developing Information and Support Necessary to Prioritize & Support Removal of Abandoned Vessels Impacting Coral Resources, 2003 Biennial Coastal Zone Conf. 1, 5, available at http://www.csc.noaa.gov/cz2003/proceedings/pdf_files/helton.pdf.
- 61 See Training Manual, *supra* note 4, at 4.
- 62 See *id.*

- 63 See Marine Debris Initiative: Abandoned Vessel Removal, DHEC, http://www.scdhec.gov/environment/ocrm/vessel_removal.htm (last visited Mar. 16, 2011) [hereinafter Debris Initiative] (“[When] abandoned vessels and other hazards litter the coast ... [they] can ... significantly impair the recreational and tourism value of tidal marshes and estuaries.”).
- 64 *Id.* The coalition is named the Marine Debris and Abandoned Vessel Removal Task Force. *Id.*
- 65 See *id.* (“To date, over 80 abandoned vessels ... have been removed from coastal waters stretching from Georgetown to Hilton Head Island.”).
- 66 See *id.* (stating that one of the goals of the task force is to “[e]stablish a recurring funding source for removal” of abandoned vessels).
- 67 43 U.S.C. §§ 2101-2106 (2006).
- 68 16 U.S.C. §§ 1431-1445c-1 (2006 & Supp. 2009).
- 69 See generally Adam P. Samansky, Comment, The Practical Effects of Federal Legislation Altering and Amending the Substantive Admiralty Law of Salvage and Finds: The Portland Model, 37 *Suffolk U. L. Rev.* 513 (2004) (discussing the effects of the National Marine Sanctuaries Act and the Abandoned Shipwreck Act on admiralty law).
- 70 International Convention on Salvage, Apr. 28, 1989, 1953 U.N.T.S. 193.
- 71 *Id.* at 94-95.
- 72 Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage at Sea, Sept. 23, 1910, 37 Stat. 1658.
- 73 Martin Davies, Whatever Happened to the Salvage Convention 1989?, 39 *J. Mar. L. & Com.* 463, 463-64 (2008).
- 74 33 U.S.C. § 407 (2006).
- 75 33 U.S.C. § 1322 (2006 & Supp. 2009).
- 76 33 U.S.C. § 1251 (2006 & Supp. 2009).
- 77 See Helton & Zelo, *supra* note 60, at 1.
- 78 *Id.*
- 79 *Id.*
- 80 *Id.*
- 81 *Id.*
- 82 See Debris Initiative, *supra* note 63.
- 83 See Federal and State Agency Jurisdictional Flowchart: Abandoned Vessels and Marine Debris, DHEC, http://www.scdhec.gov/environment/ocrm/docs/debris/vessel_flowchart.pdf (last visited Mar. 16, 2011) [hereinafter Agency Jurisdictional Flowchart].
- 84 *Id.*
- 85 *Id.*
- 86 See Agency Jurisdictional Flowchart, *supra* note 83.
- 87 *Id.*
- 88 *Id.*
- 89 *Id.*

- 90 Agency Jurisdictional Flowchart, *supra* note 83.
- 91 S.C. Code Ann. Regs. 30-11(E)(2) (Supp. 2010) (“Upon notification by OCRM, the owner of the abandoned vessel or structure will have 30 days from date of notification to remove it from the critical area at his or her expense.”). The South Carolina code’s definition of a critical area includes coastal waters, tidelands, beaches, and dunes. S.C. Code Ann. 48-39-10(J)(2008).
- 92 S.C. Code Ann. Regs. 30-11(E)(1) (Supp. 2010). In determining which derelict boats and owners to target for removal and civil enforcement, OCRM considers a variety of factors, including the proximity of the abandoned vessel to shellfish beds and other sensitive areas. S.C. Code Ann. Regs. 30-11(B) (Supp. 2010). Navigational hazards also are a concern, especially the potential for impairment of the commercial and recreational use of waterways. *Id.*
- 93 Agency Jurisdictional Flowchart, *supra* note 83.
- 94 *Id.*
- 95 S.C. Code Ann. § 50-21-190(A) (Supp. 2010). After the emergency has passed, however, the owner and operator of the abandoned craft or motor must “make a bona fide attempt to recover the watercraft.” *Id.*
- 96 S.C. Code Ann. § 50-21-10(1) (Supp. 2010)
- 97 S.C. Code Ann. § 50-21-190(D) (2011), available at http://www.scstatehouse.gov/sess119_2011-2012/prever/3287_20110414.htm. Similar to the process that OCRM must follow if a vessel falls within its jurisdiction, see S.C. Code Ann. Regs. 30-11(E)(2) (Supp. 2010), under the amended law, before SCDNR can designate a vessel as officially abandoned, it must “send written notice and make additional reasonable efforts to notify the last known owner, if any, of the status of the watercraft.” S.C. Code Ann. § 50-21-190(D) (2011). If notification is unsuccessful, then SCDNR must post a notice on the vessel indicating that it is abandoned. *Id.* The amended law appears to require SCDNR to wait forty-five days after posting the notice to remove the vessel since, “[i]f the owner claims the watercraft within forty-five days of the date the notice is posted, the watercraft is not considered abandoned.” *Id.*
- 98 S.C. Code Ann. § 50-21-190(B) (Supp. 2010).
- 99 *Id.*
- 100 Mount Pleasant, S.C., Code of Ordinances § 140.07 (2009). Notably, vessels identified and tagged in this manner may not satisfy section 50-21-190’s requirement that abandoned vessels be identified “by the department.” See S.C. Code Ann. §§ 50-21-190(C), (E) (2011), available at http://www.scstatehouse.gov/sess119_2011-2012/prever/3287_20110414.htm
- 101 Georgetown, S.C., Code of Ordinances art. III, § 14-42 (2006).
- 102 Beaufort, S.C., Code of Ordinances ch. 4, § 8-4009 (2004).
- 103 S.C. Code Ann. § 50-23-205(A) (2008).
- 104 S.C. Code Ann. § 50-23-205(B) (2008).
- 105 S.C. Code Ann. §§ 54-7-10, 20 (1992).
- 106 S.C. Code Ann. Regs. 30-11(E)(3) (Supp. 2010). Unfortunately, this regulation further exemplifies the confusion present in statutes governing this area because it requires the removal to comply with a section of the Code that has been repealed. See *id.*; § 50-23-135(C) (2008 & Supp. 2010).
- 107 *Id.* at 30-11(E)(5).
- 108 H. 3287, 2011 Gen. Assemb., 119th Sess. (S.C. 2011) (proposing the addition of subsection (D), which would state: “A watercraft abandoned for at least ninety days may be claimed by any person or entity as abandoned property.”).
- 109 See, e.g., Lynne Langley, Agencies Mired in Abandoned Boats, *Post & Courier* (Charleston, S.C.), July 6, 2002, at 7A (quoting the dockmaster at Charleston City Marina as saying of her experience assisting customers, “I am a pinball, going back and forth between

regulatory agencies trying to help people from out-of-town.”). The article also quoted an attorney for SCDNR as saying that “[t]he current law is not clear on who is going to do something.” *Id.* (internal quotation marks omitted).

110 See Debris Initiative, *supra* note 63.

111 Cal. Harb. & Nav. Code § 526.1 (West Supp. 2011)

112 *Id.* § 526.1(a).

113 *Id.* § 526.1(a)(1).

114 *Id.* § 526.1(a)(2).

115 *Id.* § 525(d)(1)(A).

116 *Id.*

117 *Id.* § 525(d)(B).

118 Mass. Gen. Laws Ann. ch. 91, § 43B (West Supp. 2011).

119 See Fla. Stat. Ann. § 374.982 (West 2010).

120 Lauer & Grooms, *supra* note 52, at 15A.

121 Fla. Stat. Ann. § 374.976 (West 2010).

122 Lauer & Grooms, *supra* note 52, at 15A.

123 S.C. Code Ann. § 50-21-190 (Supp. 2010).

124 See *supra* note 5 and accompanying text.

125 See S.C. Code Ann. § 50-21-190(C) (2011), available at [http:// www.scstatehouse.gov/sess119_2011-2012/prever/3287_20110414.htm](http://www.scstatehouse.gov/sess119_2011-2012/prever/3287_20110414.htm) (“An abandoned watercraft may be removed ... and disposed of by any governmental agency that has jurisdiction over the area where the abandoned watercraft is located.”).

126 § 50-21-190(C), (E) (2011), available at [http:// www.scstatehouse.gov/sess119_2011-2012/prever/3287_20110414.htm](http://www.scstatehouse.gov/sess119_2011-2012/prever/3287_20110414.htm).

127 § 50-21-190(D), available at [http:// www.scstatehouse.gov/sess119_20112012/prever/3287_20110414.htm](http://www.scstatehouse.gov/sess119_20112012/prever/3287_20110414.htm).

128 *Id.*

129 *Id.*

130 See *supra* notes 100-102 and accompanying text.

131 S.C. Dep’t Nat. Resources, <http://www.dnr.sc.gov/boating.html> (last visited Mar. 17, 2011).

132 BMP, *supra* note 12, at 18.

133 See Patrick Donohue, Beaufort Sails Toward Response to Abandoned Boat Problem, *Island Packet* (Oct. 9, 2010), [http:// www.lowcountrynewspapers.net/archive/node/159182](http://www.lowcountrynewspapers.net/archive/node/159182).

134 Beaufort, S.C., Code of Ordinances ch. 4, § 8-4009 (2004); Donohue, *supra* note 133. Notably, this time period is far less than the forty-five day time period that the state statute requires before categorizing a vessel as abandoned. S.C. Code Ann. § 50-21-10 (Supp. 2010).

135 Kropf, *supra* note 1, at 7A.

136 *Id.*

- 137 Kidney Cars, Nat'l Kidney Found., [http:// www.kidney.org/support/kidneycars/index.cfm](http://www.kidney.org/support/kidneycars/index.cfm) (last visited Mar. 18, 2011).
- 138 See F.A.Q., National Kidney Foundation, [http:// www.kidney.org/support/kidneycars/faq.cfm](http://www.kidney.org/support/kidneycars/faq.cfm) (last visited Mar. 18, 2011) (“We take mostly cars, but if it rolls, floats or flies it can help save lives!”).
- 139 Donate Now, National Kidney Foundation, [http:// www.kidney.org/support/kidneycars/donateNow.cfm](http://www.kidney.org/support/kidneycars/donateNow.cfm) (last visited Mar. 18, 2011).
- 140 See itunes preview, iTunes Preview, [http:// itunes.apple.com/us/app/charleston-waterkeeper/id360264310?mt=8](http://itunes.apple.com/us/app/charleston-waterkeeper/id360264310?mt=8) (last visited Mar. 18, 2011).
- 141 Id.
- 142 Interview with Cyrus Buffman, Exec. Dir., Charleston Waterkeeper, in Charleston, S.C. (Jan. 3, 2011).

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