



# **DERELICT RECREATIONAL BOATS, FISHING GEAR AND AQUACULTURE**

**Judicial inquiry**

**HAVSMILJÖINSTITUTETS RAPPORT NR 2023:4**

## ASSIGNMENT REPORT

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# 1 PURPOSE OF THE JUDICIAL INQUIRY

The Swedish Agency for Marine and Water Management has a government mandate for the collection and recycling of fishing gear and recreational boats.<sup>1</sup> The purpose of this judicial inquiry is to provide a basis for the Swedish Agency for Marine and Water Management to go forward and make strategic decisions regarding marine litter, specifically lost fishing gear and abandoned recreational boats.

## 1.1 THE GOALS OF THE INQUIRY

### 1.1.1 Contributions of the inquiry

The judicial inquiry is expected to clarify which responsibilities lie with different actors to deal with derelict fishing gear and recreational boats. Legal obstacles or limitations to efficient handling shall be accounted for, and, if possible, ways to decrease the legal hurdles shall be proposed.

The judicial inquiry is also expected to support municipalities and other authorities in terms of which investigations are needed to act according to applicable law. Questions covered in the report include which legislation should be applied, what demands can be made, who to hold accountable and what types of measures should be avoided to stay within the legal framework.

Since the rules are different depending on where fishing gear or boats are found, an essential part of the assignment is to categorise and describe typical situations to facilitate the practical work of dealing with derelict fishing gear and recreational boats. Possible legal deficits on responsibility and possibilities to act shall be pointed out.

### 1.1.2 The importance of the goals for the legal analysis

Which rules are presented and which perspective dominates the analysis is affected by how goals are designed. The rules presented and discussed cover how to deal with derelict recreational boats and fishing gear efficiently. When something is pointed to as a deficit of the law, it is a deficit in relation to the goal of dealing with boats and fishing gear. Since the inquiry aims to describe legal preconditions and obstacles, other legal matters are in the background. This does not mean that law on property rights is uninteresting when it is stated that the laws on finds are described as an obstacle to efficient handling of boats and gear. What is stated is that the applicable law does not contribute to reaching the goals of the present government mandate, without discussing whether there are good reasons behind the applicable law. Balancing different interests needs to be done when possible legal changes are made, but are not central to describing the importance of the legislation in the work of dealing with derelict recreational boats and fishing gear.

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<sup>1</sup> <https://www.havochvatten.se/om-oss-kontakt-och-karriar/om-oss/regeringsuppdrag/regeringsuppdrag/uppdrag-om-insamling-och-atervinning-av-fiskeredskap-och-fritidsbatar-2022.html>

It should also be stated that the point of departure is the applicable law, and the demands placed on different actors when derelict recreational boats and fishing gear are taken away for scrapping or recycling. The formal law therefore is at the forefront; what is needed to act in accordance with the law. In discussions with several stakeholders, it has been evident that “creative solutions” exist, but not always within the pale of the law. Some stakeholders operate within legally grey areas because they judge that the risk of legal consequences is less of a problem than solving the practical issues. In addition to the formal problems in the legislation, the fact that laws are sidestepped is a sign of the regulation not being optimal.

## 1.2 THE PROBLEM

Meetings with several stakeholders have been held to gain an overarching image of what is perceived as most problematic regarding derelict recreational boats and fishing gear. Regarding recreational boats, many stakeholders mention the fact that so many boats lack a known owner. There is no mandatory record for recreational boats (under 15 m in length), and nor is there mandatory boat insurance, making it relatively easy for boat owners to remain unknown. Boats with unknown owners become an economic issue since someone else is left to finance salvage, transport, store and scrap them. The lack of a known owner also poses administrative problems due to legal demands to search for the owner before taking action to relocate the boat.

Among stakeholders such as the maritime police, municipalities, boating clubs and marinas, there is frustration due to of the unclear distribution of responsibility and weak lawful authority to deal with recreational boats, as well as costs being paid by the wrong actors.

The costs of maintaining and scrapping boats are stated as a reason for boats being abandoned. Owners often try to stay out of sight of authorities to avoid being held responsible for these costs. What constitutes a reasonable distribution of the cost of scrapping boats is outside the scope of this judicial inquiry, but is part of parallel work within the Swedish Agency for Marine and Water Management’s government mandate.

In a pilot project carried out by the Keep Sweden Tidy Foundation (*Håll Sverige Rent*) in 2013, the same challenges related to a lack of authority to relocate boats for actors other than the owner.<sup>2</sup> Of 38 identified boats, five were scrapped during the pilot project. The owners were mostly unknown, creating hurdles to salvaging and scrapping the boats. Several of the identified boats were not scrapped within the project because of the unclear legal position.<sup>3</sup>

Regarding fishing gear there, are two main problem categories to address: on the one hand lost gear left to ghost fish, and on the other hand fishing gear used against the fishing regulations. These two categories are formally meant to be dealt with separately, but are not always possible to distinguish in practice. Issues to deal with include how to

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<sup>2</sup> Stiftelsen Håll Sverige Rent, *Svenska skrotbåtar – en pilotstudie i Stockholms län*, June 2013

<sup>3</sup> Håll Sverige Rent (2013) p. 4

find lost gear, how to salvage it, and how to recycle or return salvaged gear to the owner. Based on discussions with stakeholders involved in practical work, dealing with fishing gear is not as challenging as the work involving derelict recreational boats.

Regarding aquaculture, the main issue seems to be that littering from aquaculture has not gained much attention in related regulations and guidance. It is partly unclear under what circumstances operators of aquaculture can be demanded to clean up remains from operations.

### 1.3 MAIN LEGAL ISSUES

The legal aspects of the disposal of recreational boats can be divided into three categories:

- Rules protecting and governing ownership
- Rules on responsibility for disposal and scrapping
- Rules on authority to relocate and decide on scrapping boats

The rules focused on property include the Act on Certain Provisions Regarding Finds at Sea (Act on Sea Finds) (*sjöfyndslagen*) and the Act on Finds (*hittegodslagen*), which govern the circumstances for boats changing owners through finds. Authority to relocate or scrap boats is generally lacking, apart from certain exceptions. The responsibility for scrapping boats is weakly regulated, mostly resting with the owner. In the absence of known owners, it is left to landowners and public actors to share the responsibility, and not least the costs, between them.

Corresponding rules apply to fishing gear, with the addition of rules for confiscating gear, sweeping for ghost nets, and – regarding aquaculture – rules on the supervision of environmentally hazardous activities. Rules in relation to finds are applicable for fishing gear, generally as finds at sea.

### 1.4 PREVIOUS INVESTIGATIONS ON BOATS

Of the issues covered in the judicial inquiry, the issue of recreational boats in particular has been investigated previously. In 2008, the Swedish Agency for Public Management (*Statskontoret*) presented an investigation on wrecks and ownerless boats.<sup>4</sup> It was concluded that the owners should primarily be held responsible and that routines for finding owners needed to be strengthened. Further, the investigation proposed clearer options to demand owners to act, especially for municipalities. Finally, according to the report, there was a need to facilitate action when owners fail to take their responsibility, primarily by giving municipalities the authority to relocate boats that constitute litter.<sup>5</sup>

On the issue of which situations are governed by law, the Agency for Public Management's report concluded that boats which hinder marine traffic or pose immediate

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<sup>4</sup> Statskontorets Rapport 2008:6, *Vrak och ägarlösa båtar*

<sup>5</sup> The needs are described in Statskontoret (2008) p. 10

environmental threats could be dealt with under existing rules, while rules were largely lacking in the case of boats that constitute litter.<sup>6</sup> A central issue highlighted in the report was financing, stating that several problems relating to boats stemmed from the question of who should pay for collection and scrapping.<sup>7</sup>

The Environmental Protection Agency continued the work of the Agency for Public Management under a government mandate.<sup>8</sup> Its report covered issues of responsibility, tracking owners, and the authority to dispose of boats that constitute litter. Proposed measures included a national producer responsibility scheme and working for EU-wide producer responsibility, introducing a recreational boat register, and greater authority for municipalities to deal with derelict recreational boats and recreational boats that constitute litter.

The next step was taken by the Ministry for the Environment, circulating a memorandum proposing a new act on relocating boats for consultation.<sup>9</sup> The proposal was issued in answer to the issues raised in the investigations carried out by the Agency for Public Management and the Environmental Protection Agency. According to the memorandum, there was "... a need for supplementary legislation giving the state or municipalities the clear authority to relocate a boat in cases where it is deemed necessary."<sup>10</sup> The proposal covered relocating several types of boats, scrap boats being most important in the present investigation. A 'scrap boat' was defined as "... a boat which with regard to state, the time it has been in the same place, or other circumstances must be considered abandoned, and which obviously has little or no value".<sup>11</sup>

Its proposal never became a bill that was presented to the parliament (*riksdagen*), and the problems identified largely remain.

## 2 THE ISSUE OF OWNERSHIP

### 2.1 OWNER RESPONSIBILITY

The owner is primarily responsible for salvage, relocation, scrapping or any other actions needed to avoid a boat causing problems. When responsibility is mentioned for other actors, it is always assumed that the owner is either unknown or cannot be held accountable for some other reason. To hold owners accountable, the owners must be known to the authorities, and this is a problem when there is no register of recreational boats. Without a register, it is easy for those who are not willing to bear the costs of disposing of derelict boats to hide. Authorities that want to salvage and scrap recreational

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<sup>6</sup> Statskontoret (2008) p. 59

<sup>7</sup> Statskontoret (2008) p. 61

<sup>8</sup> Naturvårdsverket (2011), *Nedskräpande och uttjänta fritidsbåtar*, ärendenummer: NV-01515-10

<sup>9</sup> Miljödepartementet (2012) Remiss M2012/1824/R angående *Promemoria om flyttning av båtar och skrotbåtar*. Circulated for referral on 6 July 2012

<sup>10</sup> Miljödepartementet (2012) p. 13

<sup>11</sup> Miljödepartementet (2012) p. 17



boats often need to assume ownership before they can move forward and deal with the boat. The rules governing found boats have been called “exceedingly unclear”<sup>12</sup> and, depending on whether the Act on Sea Finds or the Act on Finds is applicable, the possible actions are different.

Many of the cases mentioned in the report are made more complex because the owner is unknown, but even when there is a known owner the situation may be difficult to deal with, as shown in the case of Sundland, presented in 4.1.4.

## 2.2 THE IMPORTANCE OF OWNERSHIP

When working to scrap or recycle derelict boats and fishing gear, not knowing who the owner is becomes an obstacle to disposing of the boats and gear efficiently. The main issue of the rules on lost property is who is, or could become, the owner of an item. The Act on Sea Finds covers abandoned boats and boating accessories found in water or at the shoreline. The Act on Finds governs other finds. In both cases, it is assumed that someone who finds an item wants to claim it, or at least get a finder’s fee.

For derelict boats and fishing gear, there is usually no incentive to claim title since that mainly brings costs in connection with recycling or scrapping. The issue is relevant because of legislation hindering authorities from relocating and eventually scrapping items as long as ownership is unclear. Since there is no general authority responsible for disposing of derelict boats, one way to move forward is to first claim title and thereafter be able to scrap it. In this case, the rules on finds are hindering efficient disposal of recreational boats. The purpose of the legislation is to protect owners’ interests, when owners in practice often lack interest in their boats or gear once they are derelict and abandoned.

## 2.3 SUNKEN, DRIFTING OR BEACHED (SEA FINDS)

### 2.3.1 Where are sea finds made?

Boats found in water or beached are primarily governed by the Act on Sea Finds. Under the act, it is mandatory to report salvaged sea finds, boats or boating accessories to the police, the Coast Guard or customs.<sup>13</sup> Thus, only spotting an abandoned boat does not imply an obligation to report. The police are then responsible for inspecting finds and issuing a public notice in Notices to Mariners (*Underrättelser för sjöfarande*), whereafter the owner has 90 days to make themselves known.<sup>14</sup> If the owner is not identified within the time given, the find goes to the salvor.<sup>15</sup> This is the simple version of how title can be transferred to a finder or salvor, such as a municipality searching to scrap a boat.

The Act on Sea Finds is applicable in the sea within the archipelago, along the coast, and in navigable lakes, rivers or canals.<sup>16</sup> The purview has been unchanged since the 19<sup>th</sup>

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<sup>12</sup> Tiberg, Hugo, *Båtfynd – ett dimmigt rättsområde*, SvJT 2020 p. 288

<sup>13</sup> Paragraph 1, Act on Certain Provisions Regarding Finds at Sea (Act on Sea Finds)

<sup>14</sup> Paragraph 3, Act on Sea Finds

<sup>15</sup> Paragraph 4, Act on Sea Finds

<sup>16</sup> Paragraph 1, Act on Sea Finds

century, with language updates along the way.<sup>17</sup> Defining the purview at sea is not a difficult task, but which inland waters are included as navigable is harder to determine. Tiberg discusses existing caselaw and concludes that the interpretation of ‘navigable waters’ is not clear.<sup>18</sup> In a Court of Appeal case regarding Lake Finjan in Skåne, the court judged the lake as navigable, while the District Court had said it was not a case of sea finds because Lake Finjan could not be reached from the sea by commercial vessels.<sup>19</sup> Even after the case at the Court of Appeal, police practice has apparently been to draw the line at what is reachable from the sea, but after changes made in 2018 reference is made to the Lake Finjan case and it should thus be interpreted so that all navigable waters are included in the purview of the Act on Sea Finds.<sup>20</sup> Karnov’s influential commentary – in which reference is made to the definition of internal waters in the Act concerning the Territorial Waters of Sweden, where in turn it is stated that internal waters include lakes, watercourses and canals – is in favour of the wider interpretation of navigable water.<sup>21</sup> Internal police guidelines are not explicit on the matter, but reference the Finjan case and thus imply that all waters that are navigable are included in the Act on Sea Finds.<sup>22</sup> What is clear is that at least larger lakes and watercourses which are navigable from the sea are within the purview of the Act on Sea Finds, while the limit on smaller waters without navigable connection to the sea is more unclear. To avoid problems, it is easiest for the finder to assume that a find is a sea find in uncertain cases. Even though it is the responsibility of the police to ensure cases are dealt with in accordance with the law, it is evident from the account that it is not always easy to decide.

### 2.3.2 When is a boat abandoned?

The Act on Sea Finds refers to “abandoned” boats and items, sunken, drifting or beached.<sup>23</sup> While Tiberg does not discuss the issue of disposal of derelict boats, he touches upon the term ‘abandoned’, and the consequences of its interpretation. Among other things, Tiberg points to the “unfortunate” police practice being accepted in courts.<sup>24</sup> In a case example from the Svea Court of Appeal, the sunken boat was not considered abandoned since it had been moored but the rope had broken when the boat sank.<sup>25</sup> Internal police guidelines follow the same pattern; a moored boat is not abandoned.<sup>26</sup> In practice, however, the police have not always followed these guidelines, resulting in the Chancellor of Justice on several occasions convicting the police for handing over boats to a salvor when, according to case law, they have not been abandoned and consequently are

<sup>17</sup> Tiberg (2020) p. 290

<sup>18</sup> Tiberg (2020) p. 290

<sup>19</sup> Hovrätten över Skåne och Blekinge 20 November FT 859-03 and Hässleholms TR 17 March 2003 case FT 1706-02

<sup>20</sup> In the older guidance RPSFS 2003:3, used until 2018, the following was stated: “By navigable lakes, rivers and canals, should be meant such waters that are connected to the sea, insofar as they are navigable with merchant ships.” In the current handbook, it is stated that a legal definition of navigable water does not exist, but that the Court of Appeal has judged that all waters that are possible to navigate with a boat are included. No further commentary is made, so it is to be assumed that the police follow the Court of Appeal judgement. See: PM 2018:40, *Polismyndighetens handbok om handläggning av ärenden om hittegods och andra fynd* p. 40

<sup>21</sup> See Berg, Lag (1918:163) med vissa bestämmelser om sjöfynd 1 § Karnov (JUNO) (accessed 16 November 2022)

<sup>22</sup> PM 2018:40. p. 40

<sup>23</sup> Paragraph 1, Act on Sea Finds

<sup>24</sup> Tiberg (2020) p. 291

<sup>25</sup> Svea Hovrätt, case DT 19/86, 30 May 1986

<sup>26</sup> Tiberg (2020) p. 291 referring to RPSFS 2003:2 and the current PM 2018:40 p 19.4.2

not a sea find.<sup>27</sup> The problem of the narrow interpretation of abandonment is that many boats fall outside the scope of the Act on Sea Finds and cannot be scrapped even though they lack value. Instead, they risk being left where they are, or disposed of in a legal grey area when the owner is unknown. Such boats may instead be considered lost property – see further 2.3.

### 2.3.3 Exemptions in the Act on Sea Finds

Public notice can be avoided if either the value of the find is below SEK 100 or the costs of salvaging, caring for and selling are so large that a reasonable salvor's fee cannot be paid.<sup>28</sup> If exempted from public notice, the find may be released immediately by the police. A large proportion of ghost nets have no value and can be exempted, after being inspected by the police. A number of abandoned recreational boats should also fall within the exemption, since the costs of salvage, etcetera, may often exceed the value of the boat. This way of reasoning may seem counterintuitive, since the boats in question are not supposed to be sold but rather to be scrapped, and salvors therefore would not claim a salvor's fee. Given the present legislation, it nevertheless represents a way for authorities to facilitate administration and avoid long handling times.

## 2.4 LOST PROPERTY

### 2.4.1 Boats on land or in water (when not sea finds)

Boats that do not fall within the definition of sea finds may often be classified as general finds (*hittegods*).<sup>29</sup> When found on land, boats are not sea finds and generally fall under the Act on Finds. The Act on Finds is not restricted regarding the location of the find, and other preconditions than those under the Act on Sea Finds apply for calling something a find. For finds, it is enough that an item is not in anyone's possession. Regarding boats, it has been considered enough that a boat is in a spot where the owner would not likely leave it, instead of the narrower definition of 'abandoned' in the Act on Sea Finds.<sup>30</sup> The police have, on several occasions, treated boats as regular finds, sometimes even moored boats, which has led to the Chancellor of Justice taking action and deciding that the police have acted beyond their competence.<sup>31</sup> The problem has been that the owner has been judged to still be in possession of the boat, and that the transfer of title has taken place on incorrect grounds. This problem should be minimal when it comes to boats without value that are ready to be scrapped. A possible claim for compensation from the previous owner would not be of interest. Tiberg concludes that there should be some sign of decay, that the boat has been in the same place for a very long time or that it has sunk in order to classify it as a find.<sup>32</sup> The conclusion is reasonable and useful as a template for when measures should be taken on boats that constitute litter.

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<sup>27</sup> Tiberg (2020) p. 292

<sup>28</sup> Paragraphs 6 and 7, Act on Sea Finds

<sup>29</sup> Tiberg (2020) p. 292

<sup>30</sup> Tiberg (2020) p. 292

<sup>31</sup> Tiberg (2020) see p. 293 note 47 for references to JK's decision.

<sup>32</sup> Tiberg (2020) p. 293

### 2.4.2 Discarded and valueless items

Regarding finds, there is an established practice to exempt finds that are discarded, abandoned or have close to no monetary value.<sup>33</sup> This should be applicable when the previous owner has clearly discarded the boat, or it is in such a decayed state that the value is very low. Drawing the line between useful and useless is hard, and the recommendation is to use the exemption carefully, or run the risk of exceeding one's authority and being criticised by the Chancellor of Justice.

## 2.5 DIFFERENCES BETWEEN SEA FINDS AND LOST PROPERTY

Apart from the exemptions mentioned above, it is mandatory to issue public notice of sea finds. There is no corresponding demand for other lost property (*hittegods*), but if the boat has a value, it is also possible to issue public notice of such finds. When reporting a find, it is important to know that all sea finds must be reported to the police. The exemptions in the Act on Sea Finds apply to the question of public notice and the waiting time of 90 days, not to the obligation to report the find. Only the police can decide that a sea find is exempted, so even when a sea find is worth less than SEK 100, it must still be reported.

As mentioned above, there is a little more room for interpretation regarding lost property that is discarded, abandoned or virtually without value. In contrast to the Act on Sea Finds, the Act on Finds itself does not explicitly cover the exemptions, which become visible in bills and older precedents. The delimitation is thus less clear, but it is recommended that the police should be contacted to avoid the risk of legal consequences.

## 2.6 ARBITRARY CONDUCT – WHAT IS THE ACTUAL PROBLEM?

Many of the issues regarding the disposal of recreational boats stems from the question of ownership. Dealing with an end-of-life boat is primarily the responsibility of the owner, but in many cases the owner cannot be identified. Costs relating to salvage and scrapping are reasons for owners trying to remain unknown to authorities. When owners are not known, authorities and landowners are limited in their options for disposing of boats that need scrapping. In some cases, there are specific rules on the relocation of boats,<sup>34</sup> but otherwise title must be claimed before disposing of the boat.

The need to apply the regulation on finds is due to the fact that relocating and scrapping boats may otherwise constitute a crime. Arbitrary conduct (*egenmäktigt förfarande*) is committed when taking someone else's property, not to claim it as one's own, but for example to scrap it.<sup>35</sup> In a couple of older precedents from the Supreme Court, the issue of arbitrary conduct has been dealt with in relation to boats and sea finds. In one case, a man was found guilty of arbitrary conduct for taking a canoe which he (wrongly) thought

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<sup>33</sup> See Berg, Lag (1938:121) om hittegods, 1 § Karnov (JUNO) (accessed 16 December 2022); referring to older bills and caselaw: NJA II 1938 p. 743 and 747, NJA 1952 p. 177. In a case from 1952, the Supreme Court stated that there must be cases where no owner exists or the value is so low that it would be obviously unreasonable with mandatory reporting of finds.

<sup>34</sup> The issue of authority to act is expanded on in section 4.

<sup>35</sup> Arbitrary conduct is found in chapter 8, paragraph 8 of the Criminal Code (*Brottsbalken*)

was being used for fish poaching.<sup>36</sup> Another case dealt with the issue of whether a vessel that had run aground was abandoned and thus a possible sea find.<sup>37</sup> A key question in the case was when salvage could take place. Since there was no immediate danger to the salvaged goods and no approval from the owner, the ‘salvors’ were found guilty of arbitrary conduct instead of obtaining the salvor’s fee they wanted. Neither of the two cases are characteristic disposals of derelict boats, but they illustrate how someone relocating a boat runs the risk of being found guilty of arbitrary conduct.

In practice, the problem may not be very significant when it comes to derelict boats, since conflicts with previous owners are unlikely. The problem is that it still involves operating within a legal grey area, hoping to avoid legal consequences. Speaking to actors in the field, it is evident that the problem of derelict and abandoned boats is sometimes solved in practice, despite knowing that it may be against the rules. The risk of legal consequences has been deemed so low that the need to dispose of these boats has been more pressing. This is a clear example of how the legislation is not suited to dealing with derelict boats, and instead produces obstacles to efficient disposal. It is not desirable for stakeholders to find it a realistic option to sidestep legal demands, and this strongly suggests a need to adapt the legislation to meet the need for disposing of current and future derelict recreational boats.

## **3 RESPONSIBILITY FOR DISPOSAL AND RECYCLING**

### **3.1 OWNER RESPONSIBILITY**

The owners of boats or fishing gear are primarily responsible for taking care of their property and ensuring that it does not cause damage or littering. In line with the polluter pays principle, owners are both practically and legally in a position to make sure that boats do not cause environmental problems. The responsibility of other actors is secondary, meaning that it begins if the owner is either unknown or otherwise cannot be made to take measures to avoid problems. Issues of responsibility are covered in this section, while the issue of authority is brought up in section 4.

### **3.2 WASTE ACCORDING TO CHAPTER 15 OF THE ENVIRONMENTAL CODE**

#### **3.2.1 When does a boat or fishing gear become waste?**

A boat abandoned by its owner is waste according to the definition of waste in the Environmental Code: “by waste is meant, in this Code, any substance or object which the holder discards, or intends or is required to discard.”<sup>38</sup> An intentionally dumped boat is clearly waste, but otherwise it is often a grey area where it is less clear when someone intends to or is required to discard a boat. Has the owner actively discarded the boat? Or

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<sup>36</sup> NJA 1978 p. 607

<sup>37</sup> NJA 1978 p. 157

<sup>38</sup> Chapter 15, paragraph 1 of the Environmental Code

has it rather been left and over time turned from a used boat into what may be classified as waste? The issue has been covered in case law.

The owner of a derelict boat or derelict fishing gear is considered a waste producer under the Environmental Code.<sup>39</sup> Waste producers are primarily responsible for making sure that the waste is disposed of correctly.<sup>40</sup> A boat owner intending to discard their boat thus has the legal responsibility to make sure it is handed over to a facility where it can be properly scrapped and recycled.

### 3.2.2 Municipal waste

Municipal responsibility for waste management covers municipal waste (household waste and waste from other sources which, in type and content, is similar to household waste).<sup>41</sup> If recreational boats are considered municipal waste, it would be the responsibility of the municipalities to collect them for recycling or scrapping. If it is claimed that municipalities are responsible for dealing with boats as waste, these boats must be considered municipal waste under the legislation.<sup>42</sup>

The question of whether recreational boats should be regarded as municipal waste has been contested. In guidelines from 2023, the Environmental Protection Agency has made the judgement that recreational boats are not municipal waste.<sup>43</sup> Smaller canoes, surfboards and similar objects may possibly be considered household waste and thereby subject to municipal responsibility.

Boats are not included in the explicit exemptions from what constitutes municipal waste, unlike cars.<sup>44</sup> This would conversely suggest that boats may be included as municipal waste. As of yet, there is no producer responsibility for recreational boats. Nor are recreational boats explicitly mentioned in the waste codes of the Regulation on Waste (2020:614).<sup>45</sup> Boats may be classified under vehicles according to the Regulation, as vehicles and vehicle parts are defined as: *Waste not mentioned in other parts of the list – Derelict vehicles from different types of transport (including machines not intended for public roads) and waste from dismantling of vehicles and vehicle maintenance.*<sup>46</sup> The problem with this interpretation is that vehicles are defined elsewhere as motor vehicles intended for road use.<sup>47</sup> Thus, boats cannot be included in that waste category.

According to the Directive on end-of-life vehicles, the definition of waste is used to determine whether or not a vehicle is considered to be at end of life.<sup>48</sup> Waste is, in turn, defined as “any substance or object which the holder discards or intends or is required to

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<sup>39</sup> The term waste producer is defined as the one causing the waste in chapter 15, paragraph 4 of the Environmental Code

<sup>40</sup> Chapter 15, paragraph 11a of the Environmental Code

<sup>41</sup> Chapter 15, paragraph 20 of the Environmental Code

<sup>42</sup> See chapter 15, paragraph 3 of the Environmental Code

<sup>43</sup> Naturvårdsverket, Vägledning till definitionen av kommunalt avfall, version 2

<sup>44</sup> Chapter 15, paragraph 3 of the Environmental Code

<sup>45</sup> Different types of waste are classed according to a waste code, EWC-code, common to the EU. Waste codes are found in Appendix 3 to the Regulation on Waste (*avfallsförordningen* (2020:164)) and are divided into 20 chapters.

<sup>46</sup> Regulation on Waste, waste chapter 16 01

<sup>47</sup> Art 2.1 Directive 2000/53/EC of the European Parliament and of the Council of 18 Sept 2000 on end-of life vehicles

<sup>48</sup> See Art 2.2 in Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles, which refers to art. 1a in Council Directive 75/442/EEC of 15 July 1975 on waste

discard”.<sup>49</sup> As can be seen, this is the same definition of waste as in the Swedish Environmental Code.<sup>50</sup> How waste in the form of recreational boats should be managed is largely unregulated. Boats are not municipal waste, there is no producer responsibility, and no actor is explicitly responsible for ensuring that recreational boats are disposed of correctly.

### 3.3 LITTERING

#### 3.3.1 What is an end-of-life boat?

When dealing with littering, it is essential to clarify what could be an end-of-life boat (*skrotbåt*), and thus results in a need to dispose of and scrap it.<sup>51</sup> In an older proposal for a Act on the Relocation of Boats, end-of-life boats were defined as “boats which regarding state, the time they have been in the same place, or other circumstances must be considered abandoned and obviously have little or no value”.<sup>52</sup> Many boats that come across as litter fit the definition, though not all are of such low value. Exactly when a boat becomes litter is a question without a clear answer.

#### 3.3.2 Owner responsibility

The Environmental Code (chapter 25, paragraph 26) prohibits littering, which may be the case when boats are left in water or on land. Littering is independent of the definition of waste – it is enough that a boat or fishing gear is regarded as litter.<sup>53</sup> This in turn means that the issue of littering is dependent on the location. A boat on a bathing beach may be regarded as litter even if it is in good condition, whereas the same boat moored to a pier would be considered a natural part of the surroundings.

Regarding smaller recreational boats, there are many lakes where it has become a habit to simply pull the boat out of the water and keep it there, regardless of who is the landowner. When such boats gradually go from being used to become litter, it is hard for both owners and municipalities to determine when an obligation occurs to clean up by relocating the boat. In practice, several municipalities have solved this problem by issuing a public notice, and by putting notes on boats to say that cleaning measures will be taken. If they are not dealt with by the owner, the boats have been relocated by municipalities, have been reported in accordance with the Act on Finds, and eventually become municipal property after 90 days if the owners have not claimed their boats. Depending on their condition, boats have thereafter been scrapped or sold by the municipalities.

Littering is also criminalised, and may lead to up to one year in prison.<sup>54</sup> If the case of

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<sup>49</sup> Article 1a of Council Directive 75/442/EEC of 15 July 1975 on waste

<sup>50</sup> Chapter 15, paragraph 1 of the Environmental Code

<sup>51</sup> Apart from the definition boats that constitute litter, the issue of what is considered an end-of-life boat has no legal relevance at the moment, in the absence of authority to declare a boat ready for scrapping. The issue is still covered here because the practical problem is centred around end-of-life boats, hence there is a need to clarify what is being discussed.

<sup>52</sup> Paragraph 2 of the proposal Promemoria med ärendenummer M2012/1824/R

<sup>53</sup> See Prop. 1997/98:45 p. 201 in which the Government stated: “By litter is meant, among other things, metal, glass, plastics, paper or similar. By metal is meant, for example, wrecks of vehicles or parts of such. It is not required that it causes harm in some way.”

<sup>54</sup> Chapter 29, paragraph 7 of the Environmental Code



littering is considered less severe, the punishment may simply be a fine.<sup>55</sup> The penal value means that the crime of littering is statute-barred after two years.<sup>56</sup> According to a precedent from the Supreme Court, the statutory time limit starts when the littering occurs.<sup>57</sup> Precisely when littering occurs is not clear, but municipalities should report to the police or a prosecutor if a crime is suspected. If it *could* be littering, then formally that should be reported.<sup>58</sup>

### 3.3.3 The landowner's responsibility

Apart from boat owners, landowners may also be held accountable for littering. The accountability of landowners is limited, and since a precedent in the Land and Environment Court of Appeal it is generally accepted that some kind of permission, possibly passive acceptance, is needed to make the landowner responsible. The case in question involved waste dumped on a large forest property without the permission of the landowner, where the landowner had reported the problem to the municipality. The court judged it unreasonable to hold the landowner responsible, and the municipality had to deal with the waste under the Act with Particular Provisions on Street Maintenance and Signs.<sup>59</sup> Thus, the possibility for the landowner to prevent littering affects accountability. A landowner who allows boats to be moored or stored may likely be held accountable for a situation where a boat becomes litter.

### 3.3.4 Municipal responsibility

Municipalities may be held accountable for littering as landowners, but also have a general responsibility to keep publicly accessible areas in a condition which “with regard to local situations, the location and other circumstances meets reasonable claims.”<sup>60</sup> The municipal responsibility is secondary; it only applies if other actors fail to dispose of a derelict boat.

In connection with municipalities' responsibility for waste management, the organisation Swedish Waste Management (*Avfall Sverige*) points out that municipal economics must be weighed up against the need to dispose of abandoned boats. It can also be added that the municipalities may have conflicting roles, whereby the environmental administration demands within its supervisory role that other municipal branches deal with littering.

Finally, it is worth mentioning that the issue of littering in general seems to function according to the idea that if something is not seen, it does not exist. If municipalities themselves do not actively pursue the work in connection with boats and fishing gear that constitute litter, this becomes dependent upon landowners or the public pushing to have areas cleaned. In a questionnaire from Ecoloop, municipalities have described very different extents of the problem of derelict and abandoned recreational boats.<sup>61</sup> Even

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<sup>55</sup> Chapter 29, paragraph 7a of the Environmental Code

<sup>56</sup> The statutory time limit is regulated in chapter 35, paragraph 1 of the Criminal Code

<sup>57</sup> NJA 1992 p. 126

<sup>58</sup> Chapter 26, paragraph 2 of the Environmental Code

<sup>59</sup> MÖD 2006:63

<sup>60</sup> Paragraph 4, Act with Particular Provisions on Street Maintenance and Signs

<sup>61</sup> The numbers vary between zero and several hundreds of boats per municipality



though the geography differs, with some areas having more lakes or coastline, the extent to which littering has been on the agenda probably also makes a difference.

Municipalities that do not actively seek derelict and abandoned boats are likely to state that the problem is not so significant.

### **3.4 RELOCATION OF WRECKS**

#### **3.4.1 Under the Swedish Maritime Code**

Under specific circumstances, the Swedish Maritime Administration is responsible for making sure that wrecks are relocated by the owner or, when that is not possible, for carrying out the relocation itself.<sup>62</sup> There is no general obligation to salvage or relocate wreck under Swedish law. Sunken boats may possibly be classed as litter and dealt with through applicable legislation. That view is countered by the lack of specific rules on wrecks, and the fact that there is no definite responsibility for the owner to salvage a sunken boat.

## **4 AUTHORITY**

### **4.1 LITTERING**

It is one thing to have responsibility for dealing with littering, as described above, but having the legal authority to prevent or counteract littering is something else. This section covers municipal authority to demand that owners dispose of their boats, along with authority to perform relocation and scrapping when owners fail to meet their responsibility. The issue of littering is tricky, as will be exemplified, and the question of ownership is problematic. To fulfil responsibilities to keep publicly accessible areas clean, the municipalities may need to resort to the Act on Sea Finds and the Act on Finds to avoid committing any crimes when dealing with derelict and abandoned boats or fishing gear.

#### **4.1.1 Supervisory authority**

The municipal authority to act when the owner is known is based on the supervisory role established in the Environmental Code. Municipalities supervise waste management within their municipal borders.<sup>63</sup> Regarding aquaculture, generally regarded as environmentally hazardous activities, the municipalities have a supervisory role. The supervisory authority is regulated in chapter 26 of the Environmental Code, and the primary tool involves issuing an injunction to abide by the rules of the Environmental Code.<sup>64</sup>

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<sup>62</sup> See further 5.2.2

<sup>63</sup> Supervisory responsibility is described in chapter 26, paragraph 3 of the Environmental Code

<sup>64</sup> Chapter 26, paragraph 9 of the Environmental Code

#### 4.1.2 Judicial assistance from the Swedish Enforcement Agency

To enforce relocation and scrapping in cases where the municipality is not the owner of a boat, judicial assistance from the Swedish Enforcement Agency (*Kronofogdemyndigheten*) is required. In cases of littering where the owner has failed to comply with an injunction, enforcement can be applied for. As mentioned, the municipality is authorised to set such legally enforceable demands, which then can be used as grounds for judicial assistance from the Agency.<sup>65</sup>

Before an application of judicial assistance, it is important to engage in dialogue with the Agency to avoid situations where formalities get in the way of executing a decision. A typical situation which has occurred around Stockholm is that the injunction has ordered the removal of a boat from a specific property, but when the Agency has arrived the boat has been moved to a neighbouring property, making the injunction formally useless even though the problem remains. One possible way to deal with this specific problem is to set a larger geographical area from where the boat shall be relocated, for example a water body or the municipal borders.<sup>66</sup>

Cost distribution is an issue of practical importance in cases of judicial assistance. The main rule is that the defendant (the boat owner) shall bear the costs.<sup>67</sup> When the owner is unknown, or lacks property for attachment and sale, the petitioner will be held accountable for the costs.<sup>68</sup> The extent of the petitioner's accountability to bear the costs has been tried by the Supreme Court in a case where a landowner applied for judicial assistance to have a ship removed.<sup>69</sup> The court concluded that the petitioner's accountability depends on the decision to be executed. In this case, the landowner had applied for the ship to be relocated from its jetty, but the Swedish Enforcement Agency had scrapped the boat after contacting the owner. The issue at hand was whether the costs should be paid by the petitioner or the state in form of the Agency (the owner of the boat had no means for attachment and sale). The Supreme Court judged that the petitioner was to bear the costs of relocation, which they applied for, whereas the Agency had to pay for the scrapping.

#### 4.1.3 Authority to perform the responsibility of cleaning

As mentioned, where no owner is identified, it may become a municipal responsibility to deal with littering.<sup>70</sup> The problem is that there is no corresponding authority to act. Even though a boat may be litter, the municipality cannot immediately relocate or scrap it. To relocate the boat, the municipality must report it as a sea find or lost property and wait for ownership to be transferred if the owner is not found within 90 days. Thus, there is a clear gap between the legal obligation to address the problem and the legal authority to act efficiently.

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<sup>65</sup> Chapter 26, paragraph 17 of the Environmental Code

<sup>66</sup> Personal communication, Per-Olof Walldén, Swedish Enforcement Agency

<sup>67</sup> Chapter 17, paragraph 8 of the Enforcement Code

<sup>68</sup> Chapter 17, paragraph 2 of the Enforcement Code

<sup>69</sup> NJA 2017 p. 1033

<sup>70</sup> See sections 3.2.3 and 4 of the Act with Particular Provisions on Street Maintenance and Signs

#### 4.1.4 The case of Sundland – a typical case

One specific case illustrating the difficulties clearly demonstrates the inefficiencies of the legislation; it does not involve a recreational boat, but the same principles apply.<sup>71</sup> A ship had ran aground in the Öresund Sound, and was left there since the owner lacked the means to finance a salvage operation. The ship was not considered a hazard that demanded relocation under the Maritime Code, so it was left where it was.<sup>72</sup> The municipal authority to act was deemed to be to avoid littering, whereby the question was raised of when the ship would be considered litter. The municipality made the judgement that the ship was not immediately considered littering.

When inspecting the ship approximately 2.5 years after it ran aground, the municipality concluded that the ship, against the owner's claim, should be regarded as waste or at least litter. The municipality reported the litter to the prosecutor, and issued an injunction ordering the owner to move the ship and dispose of it as waste or salvage it. The prosecution authority dropped the case due to the crime being statute-barred.<sup>73</sup> Even though the injunction was not initially questioned, problems occurred when the municipality applied for a fine to be imposed, since the Land and Environment Court judged that the municipality had not shown that littering had occurred. After appeal, the Land and Environment Court of Appeal found in favour of the municipality.<sup>74</sup> A further delay occurred when the municipality applied for the Swedish Enforcement Agency to execute the injunction, since the owner had failed to follow the order. After having to appeal to court once again, the salvage was executed almost four years after the boat was run aground.<sup>75</sup>

Apart from the very slow process to remove the boat from the bank, the costs of almost SEK 1 million had to be paid by the municipality, since the owner had no means to pay.<sup>76</sup> While not being a typical case, it clearly shows the lack of efficient tools to deal with boats as litter. Despite the owner being known, the municipality had to bear the costs and was forced to wait for a long time to take measures.

## 4.2 HAZARDOUS WRECKS

The Swedish Maritime Administration has the authority, under chapter 11a of the Maritime Code, to demand that hazardous wrecks be relocated or taken care of to remove the hazard. It is primarily the owner's responsibility, but the Administration has the capacity to relocate wrecks if the owner does not follow orders.<sup>77</sup>

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<sup>71</sup> The case concerns the vessel Sundland, and a detailed account is found in Hjärne Dalhammar, A. & Dalhammar C. (2016) *Fallet Sundland: Rättsliga frågeställningar vid bortskaffande av båt*, Nordisk miljörättslig tidskrift, 2016:1 p. 61

<sup>72</sup> The Coast Guard emptied the boat of fuel and chemicals soon after it ran aground. See Hjärne Dalhammar & Dalhammar (2016) p. 62

<sup>73</sup> See Hjärne Dalhammar & Dalhammar (2016) p. 63. The statutory time limit was considered to start when the vessel ran aground, according to the prosecutor, which the municipality objected to since it did not consider the crime of littering to have been committed at that time. According to older case law, NJA 1992 p. 126, littering is not considered a continuing crime, but is committed when littering occurs.

<sup>74</sup> See MÖD 2014:41

<sup>75</sup> Hjärne Dalhammar & Dalhammar (2016) p. 67

<sup>76</sup> Hjärne Dalhammar & Dalhammar (2016) p. 68

<sup>77</sup> See further section 5.2.2

## 4.3 SALVAGE

In the context of this report, salvage under chapter 16 of the Maritime Code is primarily of interest when calculating a salvor's fee, which is used in the Act on Sea Finds to determine whether a find must be publicly notified or if the ownership may be transferred immediately.<sup>78</sup> Salvage presupposes a hazard to property. A right or authority to salvage is not described in the Maritime Code. In older case law, the Supreme Court has held that some kind of direct danger must be present for salvage to be carried out without the consent of the owner.<sup>79</sup> In general, sunken boats are not an immediate danger, and thus there is no incentive for emergency salvage.<sup>80</sup> Apart from the rules on the relocation of ships under chapter 11a of the Maritime Code or relocation in public ports, there are no maritime rules to demand salvage or to perform it at the owner's expense.

## 4.4 RELOCATION

### 4.4.1 Relocation in public ports

In a public port, it is possible to relocate ships if it “hinders the authorised use of the port or if it is positioned in a way that goes against valid provisions.”<sup>81</sup> Which ports are considered public ports is decided by the Swedish Maritime Administration.<sup>82</sup> The ship may not be relocated without notification to the owner and the opportunity for the owner to move the ship, except when urgent in which case the owner may be notified afterwards.<sup>83</sup> If the owner is not known, notification may be given by publication in *Post- och Inrikes Tidningar*, Notices to Mariners, and posted on the boat.<sup>84</sup> Thus, there are possibilities to move boats when owners are not known, or in any case when this is urgent. Cost shall be borne by the owner, and the port has the right to impound the boat until payment has been made or to sell the vessel to cover the cost, at the earliest three months after notification of relocation.<sup>85</sup>

## 4.5 COMPARISON WITH RELOCATION OF VEHICLES

At present, there is a lack of tools for municipalities, the police, county administrators, the Coast Guard and others to fulfil their obligations in terms of salvaging, transporting and scrapping boats. There is no possibility to declare a boat as ready for scrapping whereby ownership is transferred, so the authorities have to use the regulation on lost property to first gain title and then take appropriate measures. The exemptions in the Act on Sea Finds offer opportunities to gain title for boats with no value, or where the costs of salvage and other related actions exceed the value of the boat.<sup>86</sup> Many derelict and

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<sup>78</sup> See section 2 regarding the Act on Sea Finds

<sup>79</sup> See NJA 1978 p. 157 in which the Supreme Court stated “The owner's consent to salvage should be required if it can be obtained without the danger becoming impending in the meantime”.

<sup>80</sup> Tibergh, Hugo, et al. (2020). *Praktisk sjörätt*, Stockholm: Jure Förlag AB. p. 165

<sup>81</sup> Paragraph 1, Act on the Removal of Vessels in Public Harbours

<sup>82</sup> See SJÖFS 2013:4 Sjöfartsverkets tillkännagivande av register över allmänna farleder och allmänna hamnar. The register includes maps showing public harbours in Sweden.

<sup>83</sup> Paragraph 2, Act on the Removal of Vessels in Public Harbours

<sup>84</sup> Paragraph 3, Act on the Removal of Vessels in Public Harbours

<sup>85</sup> Paragraphs 5–7, Act on the Removal of Vessels in Public Harbours

<sup>86</sup> See section 2 of the Act on Sea Finds

abandoned boats do not fall within the general interpretation of sea finds, and therefore cannot be dealt with under the Act on Sea Finds. The Act on Sea Finds is not written from the perspective of scrapping boats, but presupposes that someone is interested in gaining title for the boat. Thus, the law is not suited to the present situation with a growing number of boats that are not in use and are in various states of decay.

From this point of view, it is interesting to draw a comparison with the situation for vehicles on land, which bear some similarities to recreational boats. The difference lies in the register of vehicles and thus the possibility to find owners and demand that they dispose of their vehicles or pay the costs of having them relocated. Despite this difference, the comparison is interesting since it points to the need for a clear regulation on the disposal of vehicles or boats that are no longer in use.

The right to relocate vehicles under certain circumstances and the term ‘vehicle wrecks’ are interesting when making a comparison with boats. Vehicle wrecks are defined as vehicles which, regarding their condition, the time they have been in the same place or other circumstances, must be considered abandoned, and obviously have little or no value.<sup>87</sup> An essential function of the term ‘vehicle wreck’ is that the decision to declare a vehicle a wreck and then relocate it transfers ownership to the municipality or the state.<sup>88</sup> Thereby, the authorities have the opportunity to scrap the vehicle immediately instead of having to wait for an owner to be found under the laws on finds. In this regard, scrapping derelict vehicles is much easier than dealing with derelict recreational boats.

One factor to consider is the register of vehicles, which makes the issue of finding the owner less problematic. With fewer cases where the owner is unknown, the owner can more often be held accountable for the cost of disposal for vehicle wrecks. If the owner cannot be made to pay, then the costs must be covered by the state or the municipality.<sup>89</sup>

Exactly how changes in legislation regarding recreational boats could be framed lies outside the scope of this judicial inquiry. The Act on Moving Vehicles in Certain Cases points to gaps in the legislation on disposal of recreational boats. The act may also serve as an example of how the problem of boats found in the ‘wrong’ places could be dealt with.

## 5 DERELICT RECREATIONAL BOATS

### 5.1 THE EXTENT OF THE PROBLEM

In Sweden, there are many recreational boats of varying ages. According to the Boat Life Survey 2020 carried out by the Swedish Transport Agency, Sweden has approximately 950,000 boats, of which 865,000 were estimated to be seaworthy.<sup>90</sup> Even if these numbers

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<sup>87</sup> Paragraph 1, point 3, Act on Relocation of Vehicles in Certain Cases

<sup>88</sup> Paragraph 6, Act on Relocation of Vehicles in Certain Cases

<sup>89</sup> Paragraph 7, Act on Relocation of Vehicles in Certain Cases

<sup>90</sup> Båtlivsundersökningen 2020 *En undersökning av båtlivet i Sverige*. Dnr 2021-2170. p. 14

are estimates, it is safe to say that there are many boats in need of thorough renovation or ready to be scrapped. More boats are expected to reach their end of life as many of the boats sold in the 1970s and 1980s are reaching the final stages of their useful lives.<sup>91</sup> The median production year for sailing boats is 1984, which means that half of sailing boats are 40 years or older.<sup>92</sup>

It is desirable to avoid boats being left for long periods of time, unused and constituting litter, and causing environmental problems through decaying into micro plastics. At the same time, boats are not regulated when it comes to scrapping and recycling. A lack of knowledge about the contribution from boats to plastic waste is visible in a report by the Environmental Protection Agency on plastic flows, in which new plastics in boats are not accounted for, and the knowledge about recycling is poor.<sup>93</sup> While fishing gear has its own category, boats are not mentioned in a summary of *Plastics in Sweden*.<sup>94</sup>

Several attempts have been made to make the disposal of derelict recreational boats more efficient. Previous investigations have been carried out by the Agency for Public Management<sup>95</sup> and the Environmental Protection Agency.<sup>96</sup> The report from the Agency for Public Management categorised boats into three situations – hindering, posing an environmental hazard or littering. These categories are not mutually exclusive; one boat can be problematic in all three categories at once. According to the Agency for Public Management, the two first categories are primarily related to larger commercial vessels.

The issue of derelict boats has also been raised in the Swedish Riksdag (parliament). In 2014, motions were made to change legislation to facilitate recycling derelict recreational boats and recreational boats that constitute litter.<sup>97</sup> In 2020, it was proposed that the municipalities should be authorised to relocate boats, and that a producer responsibility scheme should be introduced.<sup>98</sup>

## 5.2 RESPONSIBILITY WHEN THE OWNER IS UNKNOWN

A case from the Chancellor of Justice may serve to illustrate the legal difficulties an abandoned boat may pose.<sup>99</sup> A barge of unknown ownership was moored close to the royal palace of Drottningholm. The Drottningholm palace administration turned to the police, the Ekerö Municipality and the county administration of Stockholm County to have one of them relocate the vessel. The county administration sent the case back to the municipality, claiming that it was primarily a municipal concern. Thus, the case had made quite the journey before ending up on a municipal desk, from the first report of an environmental offence to the municipality claiming that the boat was state property under the Act on Sea Finds and thus a state responsibility. The municipality made a request to

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<sup>91</sup> See Båtlivsundersökningen 2020 p. 92

<sup>92</sup> See Båtlivsundersökningen 2020 p. 92

<sup>93</sup> Naturvårdsverket Rapport 7038 *Kartläggning av plastflöden i Sverige 2020* p. 98

<sup>94</sup> Naturvårdsverket, *Plast i Sverige – fakta och praktiska tips*, INFO-serien 8887, March 2022

<sup>95</sup> Statskontorets Rapport 2008:6, *Vrak och ägarlösa båtar*

<sup>96</sup> Naturvårdsverket, *Nedskräpande och uttjänta fritidsbåtar*, Naturvårdsverkets ärendenummer: NV-01515-10

<sup>97</sup> Motion 2014/15:2589 by Finn Bengtsson and Edward Riedl (M)

<sup>98</sup> Motion 2020/21:1977 by Johan Hultberg (M)

<sup>99</sup> Chancellor of Justice decision 12 Jan 2004 Diariern: 383-02-21

the Chancellor of Justice to declare the state responsible to remove the barge. After going through the applicable rules, the Chancellor of Justice concluded that “the inquiry into the legal position accounted for above shows that there is a lack of explicit rules about who has the right or responsibility to relocate a wreck in such a case as the one presented”. If no one claims boat, there is – according to the Chancellor – no obligation for any authority to relocate the boat. In this case, the Chancellor mention a gap in the legislation, proposed to be filled in SOU 1975:81 (Swedish Government Official Reports), but this never came to fruition. According to the Chancellor, the proclamation on the removal of wrecks hindering maritime traffic or fishing could only be used when fishing or maritime traffic was threatened, which was not the case here.<sup>100</sup>

Despite the lack of obligation for authorities to act, as stated in the case of the barge, there is a responsibility the municipalities to act when areas that are accessible to the public are littered.<sup>101</sup>

## 5.3 CATEGORISING BOATS

### 5.3.1 Obstacles, environmental hazards and littering

Categorising abandoned boats has been dealt with differently in previous investigations, articles and reports on the matter. In the 2008 report by the Agency on Public Management, boats were divided into three categories: cases of obstacles, environmental hazards and littering.<sup>102</sup> Of the three categories, it was stated that recreational boats were mainly found in cases of littering, while obstacles and environmental hazards were almost exclusively connected to larger commercial vessels.

Recreational boats that constitute obstacles can be relocated under specific circumstances. In chapter 11a of the Maritime Code, the Nairobi International Convention on the Removal of Wrecks is implemented into Swedish law.

Boats that harm the environment are primarily larger cargo vessels carrying hazardous goods or large volumes of fuel which may leak. From a broader perspective, boats slowly decaying are also an environmental problem that needs to be addressed. However, recreational boats seldom pose such big environmental threats that they force action under chapter 11 of the Maritime Code. When the boat itself is the problem, rather than leaking fuel or hazardous cargo, littering is the claim to make in order to deal with the boat.<sup>103</sup>

Under the Environmental Code, littering is prohibited in outdoor locations where the public has access or it is possible to see the litter.<sup>104</sup> According to a 2011 report by the Agency for Public Management, rules to deal with boats that constitute litter were largely

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<sup>100</sup> The rules are now found in chapter 11a of the Maritime Code. The grounds have been expanded slightly, but have not eliminated the problems in the case.

<sup>101</sup> See section 3.3.4.

<sup>102</sup> Statskontorets Rapport 2008:6, *Vrak och ägarlösa båtar*

<sup>103</sup> See further reasoning in Kern, Johnnie M. *Wreck Law, A systematisation of legal interest and conflicts*. p. 304

<sup>104</sup> Chapter 15, paragraph 26 of the Environmental Code



absent, at least when no owner was known. To support that position, reference was made to the previously mentioned case from the Chancellor of Justice in which the issue was whether the municipality or the county administration should be obliged to relocate a barge. The 2011 report compared the situation to vehicles on land, where there are clear opportunities for authorities to relocate and scrap vehicles when needed.

### **5.3.2 Obstacles and environmental hazards in chapter 11a of the Maritime Code**

In certain circumstances, a wreck can be removed under chapter 11a of the Maritime Code. The Swedish Maritime Administration makes decisions on removal (chapter 11a, paragraph 8), and the owner of the ship is primarily responsible for taking action to resolve the situation (chapter 11a, paragraph 11). If the owner fails to do what is required or cannot be reached, or if the situation is urgent, the Administration shall relocate the wreck or otherwise remove the danger (chapter 11a, paragraph 12). The measure must be proportionate to the hazard posed by the wreck.

A wreck is defined as a vessel which, after an accident at sea, is sunk or stranded, including items that are, or have been, on board the vessel.<sup>105</sup> An accident at sea is defined as a collision, grounding or other event if the event causes damage to the vessel or its cargo, or causes an immediate threat of damage. The term ‘accident at sea’ should, according to the bill, be interpreted extensively.<sup>106</sup> ‘Hazard’ is another key term, with subcategories, the first of which is every situation that poses a danger or impediment to navigation.<sup>107</sup> The other example of a hazard is when a wreck may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more states. ‘Related interests’ is an open category, but some examples are given in the legislation:

- a) maritime coastal, port and estuarine activities, including fishery activities, constituting an essential means of livelihood for the persons concerned;
- b) tourist attractions and other economic interests in the area concerned;
- c) the health of the coastal population and the wellbeing of the area concerned, including the conservation of marine living resources and wildlife; and
- d) offshore and underwater infrastructure.

Harmful consequences to the environment must be major to pose a hazard under the Maritime Code. In most cases, recreational boats do not pose a threat of major harmful consequences, and in the bill it is stated that the law is not supposed to be applied to “mere littering”.<sup>108</sup> Otherwise, it remains to demonstrate that the wreck, if left, may damage the coast or related interests. In exceptional cases, it is possible that a wreck of a recreational boat may disturb one of the specified interests, but given the reference to proportionality, the effect of chapter 11a of the Maritime Code on recreational boats is minimal.

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<sup>105</sup> Chapter 11a, paragraph 1a of the Maritime Code

<sup>106</sup> Prop. 2016/17:178, Skärpt ansvar för fartygsvrak, p. 54

<sup>107</sup> Chapter 11a, paragraph 1a of the Maritime Code

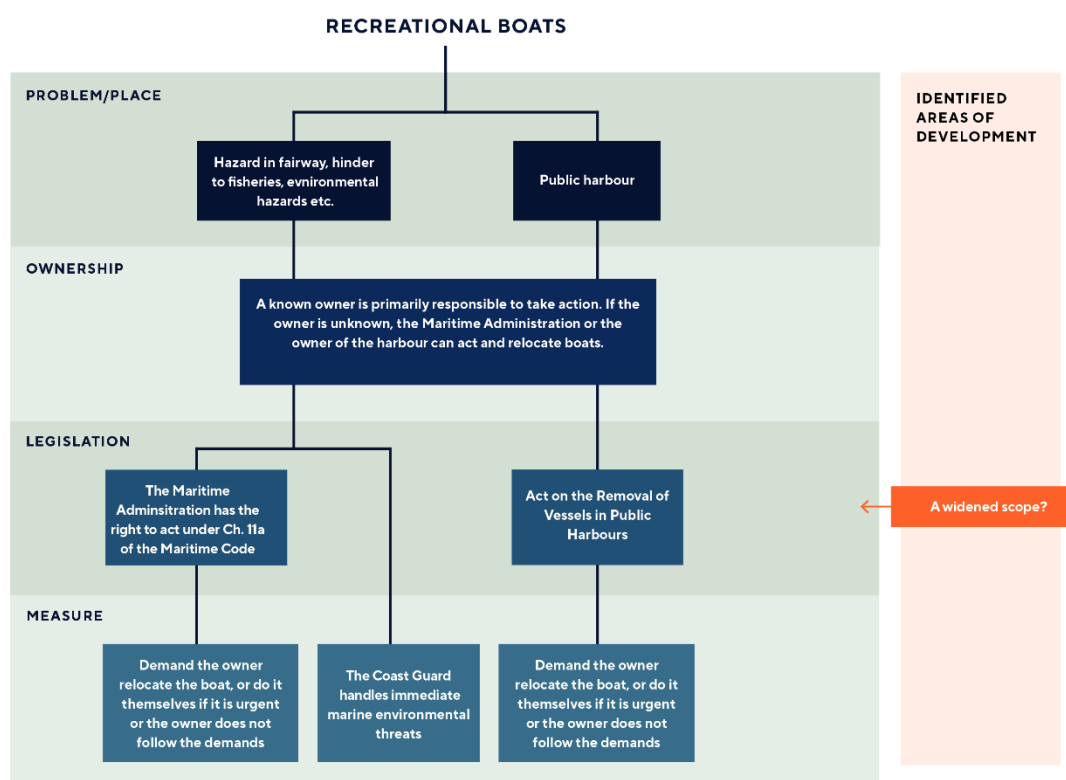
<sup>108</sup> Prop. 2016/17:178, Skärpt ansvar för fartygsvrak, p. 27



The Swedish Maritime Administration is authorised to judge whether a wreck is a hazard, as described in the Maritime Code.<sup>109</sup> The Swedish Transport Agency has been authorised to issue regulations on how the removal of wrecks should be performed, but has not yet done so.

A central limitation of the reach of the rules is that they shall only be applied to accidents at sea that have occurred after the law came into force. Wrecks from before 2017 are not included in the obligations under chapter 11a of the Maritime Code. Exactly how to determine the age of a wreck is unclear, but in practice it should mean that only wrecks known to have been involved in accidents since 2017 are disposed of under the rules.

At public harbours, the owner of the harbour has the right to relocate boats which hinder the operation of the harbour.<sup>110</sup>



*Figure 1. Description of the cases where the Swedish Maritime Administration or the owner of a public harbour can deal with boats that are obstacles or environmental threats.*

### 5.3.3 Boats that constitute litter

The flow charts presented below describe the alternatives for action depending on the circumstances under which a boat is found. The differences relate to finding place, ownership and individual characteristics that place certain demands. For municipalities, it

<sup>109</sup> Chapter 11a, paragraph 8 of the Maritime Code

<sup>110</sup> Paragraph 1, Act on the Removal of Vessels in Public Harbours

is primarily boats that constitute litter, but some other situations are also described to underline that there is specific regulation to facilitate the disposal of boats in certain situations. On the right-hand side of the images are problems identified in the regulations on the disposal of derelict boats. Flow charts without suggestions for changes, aimed at facilitating the application of current legislation, are included as an appendix to the report. The flow charts have been developed in cooperation with the communications agency Where is My Pony.

Most of the boats that need to be dealt with can be described as littering. Presently, this is the most practicable legal option for dealing with such boats. What a municipality can do depends partly on ownership and partly on where the boat is found.

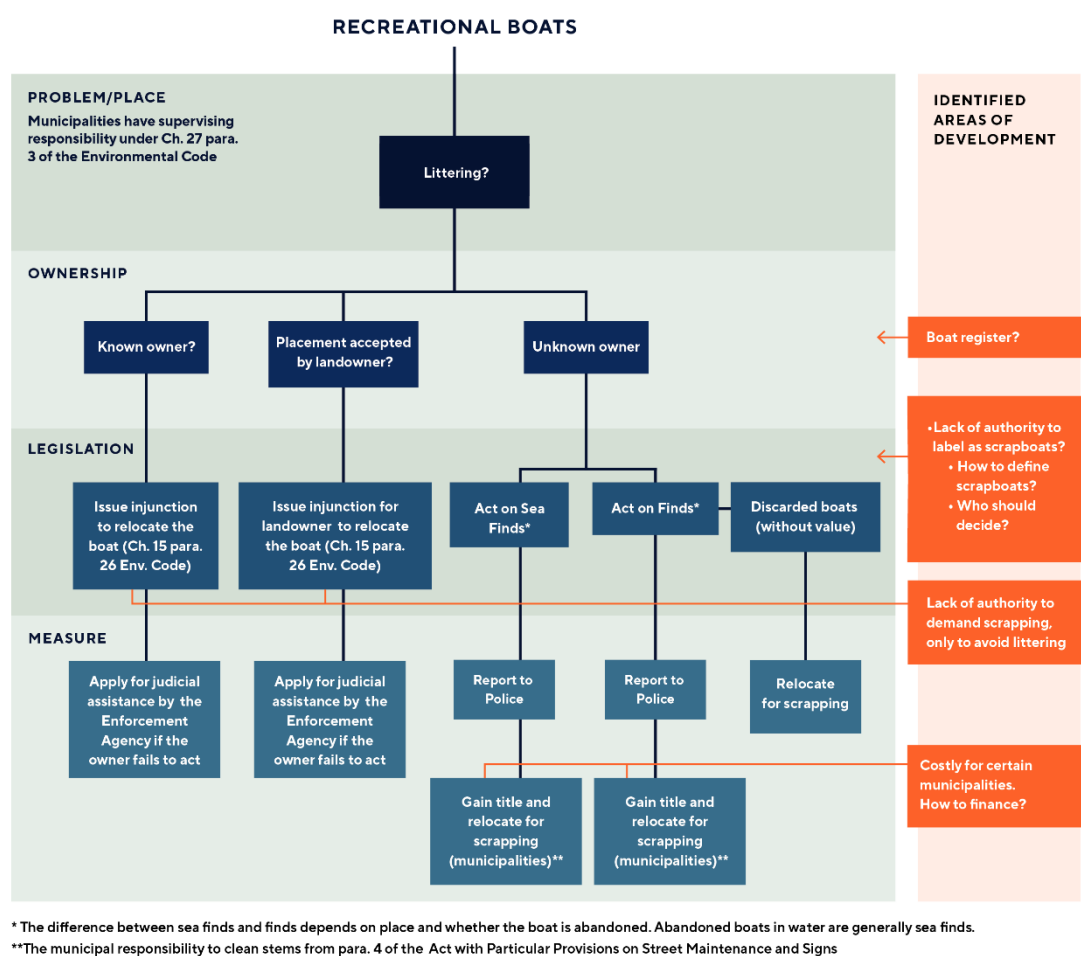


Figure 2. Schematic image of how recreational boats that constitute litter can be dealt with. The issue of what constitutes litter is addressed in section 3.3

A specific case is that of boats within the premises of a boat club or marina. The owner is often, being a member or a customer. In such cases, demands can be made in line with contracts or articles of association. Preventive efforts are important to facilitate working with scrap boats. For boat clubs, there are examples of how to write contracts and articles of association in the Boat Union's handbook for recreational harbours.<sup>111</sup>

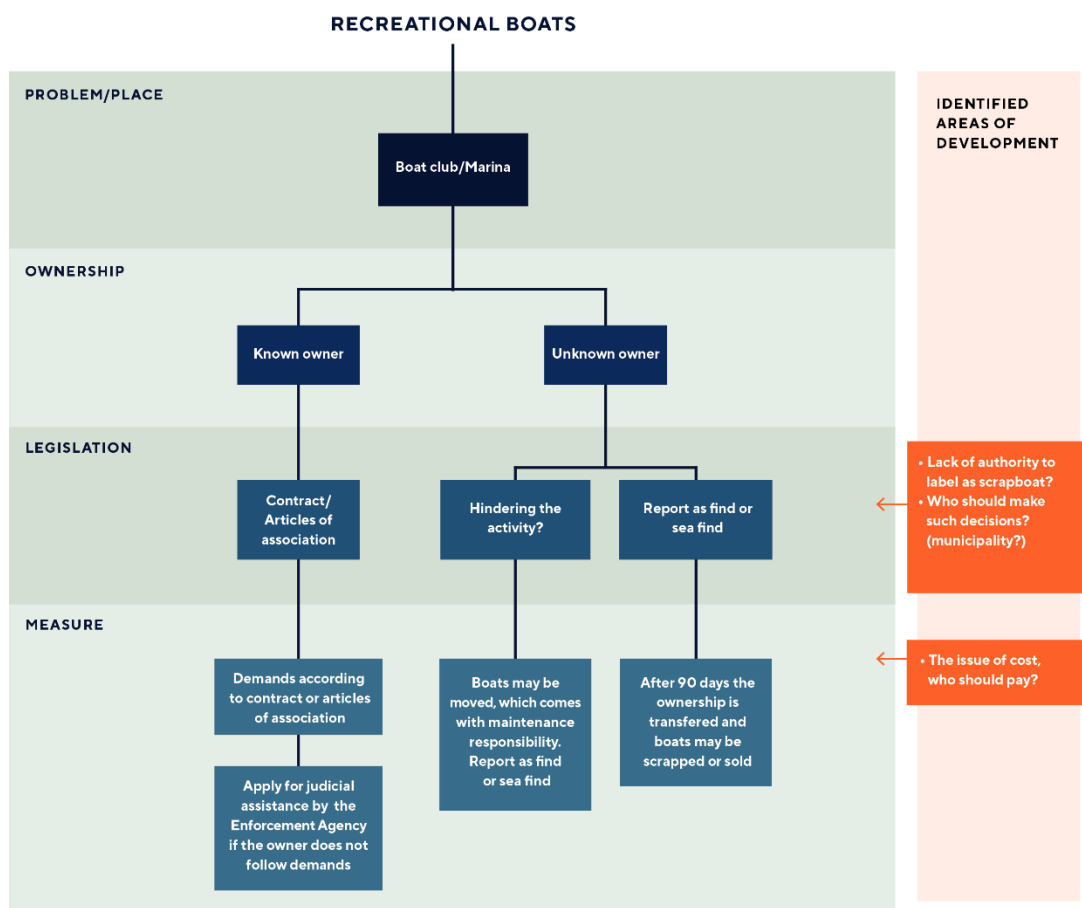


Figure 3. Flow chart for dealing with abandoned boats at boat clubs and marinas.

## 5.4 LEGAL OBSTACLES

The following is a brief summary of the challenges for those wanting to deal with derelict recreational boats. Section 7 describe the need for changes, whereas this section aims to summarise the legal position on recreational boats.

An initial obstacle to efficient disposal is that the responsibility for recreational boats is not clearly specified in the legislation, apart from the owner's responsibility to avoid littering or other problems. This in turn leads to problems when the owner is unknown, as is often the case. In some situations, the landowner may be held accountable, but only

<sup>111</sup> Svenska Båtunionen, 2022, *Handbok för fritidshamn*, p. 95 ff and appendix

when they have somehow accepted the placement of the boat in question. In the absence of others to hold accountable, the municipalities may need to dispose of boats in accordance with the Act with Particular Provisions on Street Maintenance and Signs. One problem at that stage is the need to wait for the boat to be regarded as litter before being able to take action.

Once the issue of responsibility has been solved, the next problem is the lack of clear authority to decide on the status of a boat and thereafter relocate it for scrapping. For municipalities to be able to move and scrap a boat without a known owner, they first must report the boat as a find or a sea find, and then wait for 90 days to gain title to the boat. Only after that can they scrap the boat, or sell it if it has any value.

## 6 DERELICT FISHING GEAR

### 6.1 DELIMITATIONS

Here, only fishing gear found in water is covered. Gear found on beaches is primarily dealt with through beach cleaning (*strandstädning*). According to commentary to the Act on Finds, items that are abandoned, thrown away or practically valueless are not included in the scope of the law.<sup>112</sup> What is washed up on beaches is generally broken, and of no or little value, and is thus not covered by the Act on Finds.

Gear left on piers and jetties need to be dealt with in accordance with the Act on Finds if it has any value, or otherwise as litter. Owners, if known, are responsible for taking care of their property, and otherwise the municipalities have cleaning duties.

### 6.2 FISHING GEAR

#### 6.2.1 Sea finds

As an accessory to boats, fishing gear is generally categorised as sea finds under section 1 of the Act on Certain Provisions Regarding Finds at Sea (the Sea Finds Act). To be a sea find, it has to be found in water. As mentioned above, fishing gear found on beaches is possibly a find of lost property depending on its value, but can generally be dealt with as items without value as part of beach cleaning efforts.

Dragging actions for lost fishing gear, mostly crab and lobster cages, are more interesting. If the gear is in good condition, it has a value and needs to be dealt with in accordance with the Sea Finds Act. If the gear is marked, the owner can be contacted and the gear can be returned if it is still useable.

#### 6.2.2 Lost property

Fishing gear that does not fall within the definition of sea finds may instead be dealt with

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<sup>112</sup> See Berg, Lag (19838:121) om hittegods, section 1, Karnov (JUNO) (accessed 16 January 2023)

under the Act on Finds. Parts of aquaculture facilities that have drifted from the operational area are included here, as they are not accessories to boats and are therefore not sea finds. One difficulty may involve telling aquaculture equipment apart from other fishing gear in some cases.

### 6.2.3 Illegal fishing

Fishing gear that is in active use contrary to the regulations on fishing is neither a sea find nor lost property, and needs to be dealt with under the rules on fishing. If the gear is used against the rules, thereby constituting a crime, the gear should be declared forfeited if this is not unreasonable.<sup>113</sup> Gear may be confiscated if the fisher is caught in the act.<sup>114</sup>

## 6.3 MARKING OF FISHING GEAR

### 6.3.1 Existing regulation

One way of minimising the loss of gear, facilitating fisheries control and enhancing the possibility of returning found gear is to apply distinct marks of ownership.

In the Act on Fisheries, the Government has been authorised to issue rules on marking.<sup>115</sup> These rules can be found in the Regulation on Fisheries, and demand markings to show who owns the gear and whether it is used for commercial or recreational fishing.<sup>116</sup> The Swedish Agency for Marine and Water Management has the possibility to issue further provisions for marking fishing gear.<sup>117</sup> Current provisions are found in the provisions of the Fisheries Agency (*Fiskeriverket*) (FIFS 1994:14) on marking fishing gear, now administered by the Swedish Agency for Marine and Water Management. Marking should be on the surface buoy, as follows:

1. For commercial fisheries: Vessel district number, fishing licence number or a specific registration number which can be obtained from the county administration.
2. For recreational or private fisheries: Name and address, or name and telephone number, or a specific registration number which can be obtained from the county administration.

When fishing in Lake Vänern, marking may only be done with a specific registration number which can be obtained from the County Administrative Board of Värmland County.<sup>118</sup>

In Lake Vänern, marking is mandatory not only on the surface buoy, but also on the gear itself.<sup>119</sup> This requirement was reportedly first introduced for commercial fisheries and

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<sup>113</sup> Paragraph 45 of the Fisheries Act

<sup>114</sup> Paragraph 47 of the Fisheries Act

<sup>115</sup> Paragraph 23 of the Fisheries Act

<sup>116</sup> Chapter 2, paragraph 14 of the Fisheries Ordinance

<sup>117</sup> Chapter 2, paragraph 14 of the Fisheries Ordinance

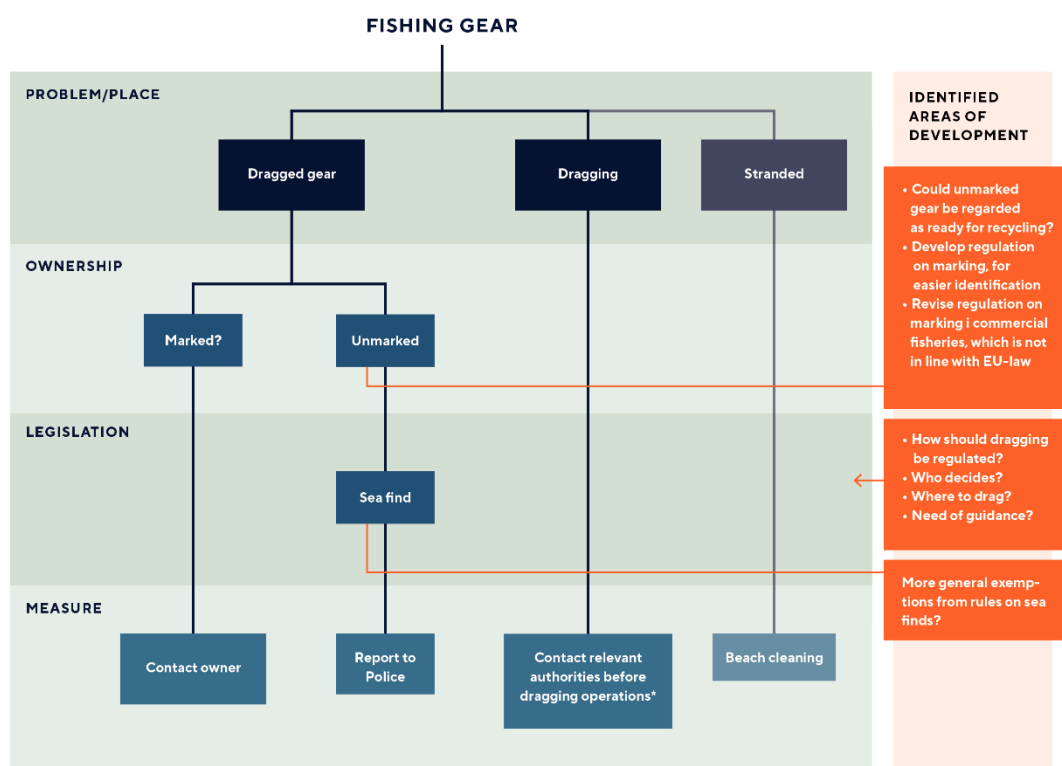
<sup>118</sup> Paragraph 3 of Fiskeriverkets föreskrifter (FIFS 1994:14) om märkning och utmärkning av fiskeredskap

<sup>119</sup> <https://www.lansstyrelsen.se/varmland/djur/fiske.html> (accessed 16 November 22)

later expanded to include recreational fisheries.<sup>120</sup> The specific rules make a difference for those dragging for lost gear. In Lake Vänern, a marking can be expected even when the surface buoy has disappeared. Gear in other waters risk becoming anonymous as soon as the buoy is lost.

### 6.3.2 Insufficient implementation of EU regulation

The Swedish regulations only require ownership information on the surface marker, not on the gear itself. In contrast, under the Control Regulation, the European Commission has specified that the gear itself must be marked with the identity of the fishing vessel.<sup>121</sup> These markings should be attached to the gear and designed in a specific way.<sup>122</sup> Except for Lake Vänern, no corresponding regulation is in place in Sweden. The EU regulation is only applicable to commercial fisheries, but the Swedish rules do not demand the same marking as the EU rules. Nor is there any obstacle to demanding the same type of marking for recreational fisheries. In dialogue with actors working on the collection and disposal of fishing gear, it has been claimed that marking the gear itself would facilitate their work. More fishers could have their gear returned and less fishing gear would have to be treated as sea finds, lessening the administrative burden.



\* FMC at SwaM, Coast Guard, County Administration, Armed Forces (for ROV)

Figure 4. Description of disposal of fishing gear, and of areas where legislation and application need to be changed to facilitate efficient disposal.

<sup>120</sup> Personal communication, County Administration of Värmland

<sup>121</sup> Since the publication of the Swedish version of this report, a new Control Regulation 2023/2842 has entered into force. The text refers to the old Control Regulation 1224/2009 and the Commission implementation regulation 404/2011.

<sup>122</sup> See articles 11 and 12 of the (old) implementation regulation.

## 6.4 AQUACULTURE EQUIPMENT

Aquaculture equipment is classed as fishing gear under the EU Directive on single use plastic.<sup>123</sup> It is therefore essential to cover here, even if the majority of handling aquaculture equipment should be done within the supervision of environmentally hazardous activities – at least as far as active aquaculture goes, and for equipment that can be connected to a specific operation. For aquaculture items of unknown origin, the same problems arise as with other fishing gear or recreational boats. One challenging factor is that the regulation of the littering aspect of aquaculture is largely absent.<sup>124</sup>

Equipment that has moved out of place can be regarded as lost property if the owner cannot be identified. Aquaculture equipment washed onto beaches could be dealt with within existing beach cleaning efforts.

Could aquaculture equipment become sea finds?

- No, not if it clearly stems from aquaculture. Sea finds are boats or accessories from boats.<sup>125</sup>
- There is a grey zone between fishing gear and aquaculture equipment in situations where they are of similar design and of unclear origin.

Most similar to other fishing gear is parts of an aquaculture facility that have blown away in a storm or where the facility is no longer operational but still in the water, sometimes without an owner due to bankruptcy.

An ongoing case in Stigfjorden (between the islands of Tjörn and Orust) is a good example of the difficulties involved in taking measures when the owner claims the equipment is still useable despite not being actively used, and also opposes claims from the authorities.<sup>126</sup> The problems are similar to the boat Sundland mentioned earlier.<sup>127</sup> It is unclear when littering occurs, and thus when municipalities have the authority to demand action. The case also illustrates that even when authorities can make demands, the processes may be long and difficult if the owner does not abide by the demands.

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<sup>123</sup> See article 3.1 of Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment

<sup>124</sup> The lack of attention to litter in aquaculture is visible in a legal doctoral thesis on aquaculture from 2022, where the issue is not covered in depth. The lack coverage of littering is a clear sign of it being a blind spot in the legislation, which is focused on running aquaculture and the impacts of the active phase of the facilities. See Kyrönviita, Jonas, *Odla Fisk Rätt : En Systemanalytisk Undersökning Av Den Rättsliga Styrningen Av Svenskt Vattenbruk*. 2022. Print. Juridiska Institutionens Skriftserie/Handelshögskolan vid Göteborgs Universitet; Skrift 039.

<sup>125</sup> Paragraph 1, Act on Sea Finds

<sup>126</sup> Personal communication with Tjörn and Orust municipalities and the county administration of Västra Götaland.

<sup>127</sup> See section 4.1

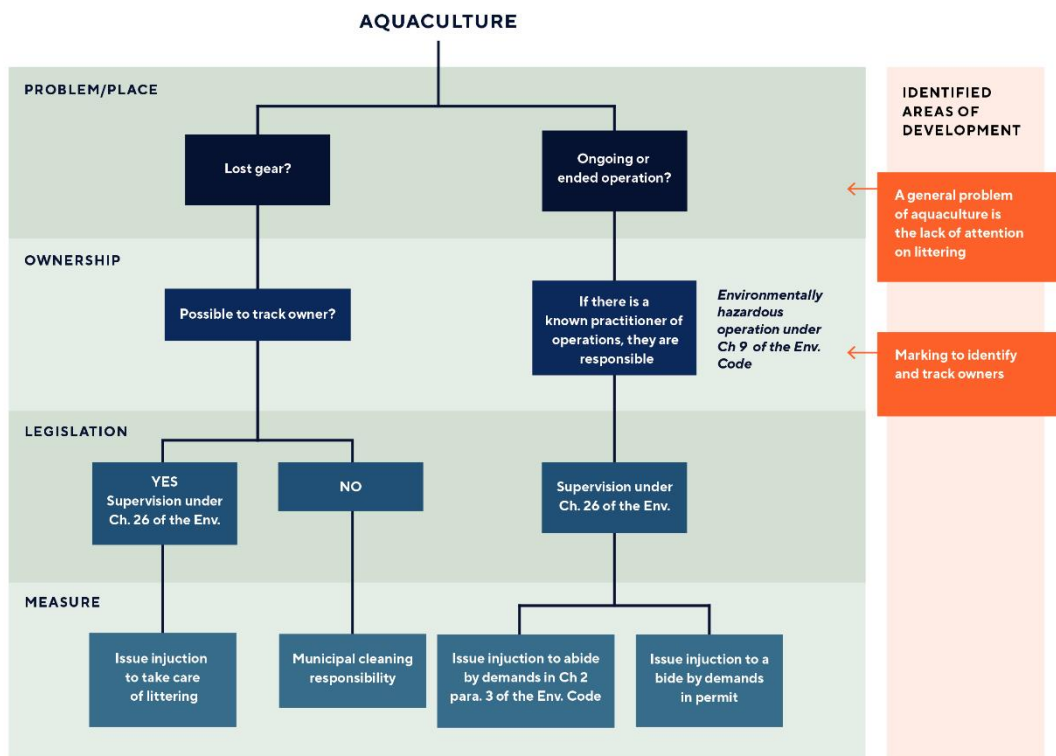


Figure 5. Schematic image for dealing with aquaculture equipment that constitutes litter.

## 6.5 LEGAL OBSTACLES

### 6.5.1 Resistance to dragging in protected areas

When speaking to those involved with dragging for ghost nets, it has emerged that it is sometimes hard to get permission to drag within marine protected areas. Of course, the bottom habitat must be considered if it is at risk of being harmed by dragging for ghost nets. Some of the reported difficulties may be due to regional differences in habitat, but there seems to be a more general difference in the approach to dragging in protected areas. It is essential that judgements are made with regard to specific conditions, and are not dependent on varying approaches between county administrations. A point of departure for more risk-oriented and uniform handling of the issue could be based on the report on dragging in protected areas, published in 2022 by the Institute for the Marine Environment.<sup>128</sup>

### 6.5.2 Narrow exemptions in the Act on Sea Finds

Waste is also formally included in the obligation to report finds under the Act on Sea Finds. The exemptions in the act relate to the obligation to give public notice of finds, not the obligation to report. In the exemptions, it is also stated that the police should issue a

<sup>128</sup> Nilsson, J. Svahn, E. (2022) *Kan draggning efter förlorade fiskeredskap tillåtas i skyddade områden?* Rapport nr 2022:4. Havsmiljöinstitutet.



certificate stating that the value is below SEK 100.<sup>129</sup> Strictly following that rule would inundate the police with sea finds, and thus it is not always obeyed.<sup>130</sup>

The problem with the current legislation is that it hinders efficient work to deal with fishing gear and recreational boats. The fact that some of the legal obstacles seem to be sidestepped does not mean that the legislation works; it only shows that some problems are resolved despite legal resistance. Failing to report a find is punishable under paragraph 8 of the Act on Sea Finds. In most cases, *arbitrary conduct* is the crime committed when dealing with derelict fishing gear and recreational boats.<sup>131</sup> Even if the risk of being reported and punished may seem minimal, it is unfortunate that there is a need to act outside the regulation when dealing with fishing gear.

### 6.5.3 Confiscation when caught in the act

One obstacle to the efficient removal of ghost nets and illegal gear is that confiscation may take place if the fisher is caught in the act of breaking the rules on fishing.<sup>132</sup>

Authority to seize fishing gear has been given to:

1. fisheries supervisors appointed in accordance with paragraph 34, and
2. such employees at the Coast Guard, the Swedish Agency for Marine and Water Management or the county administration who are tasked with supervising compliance with fishing regulations.

Issues on confiscation are part of the ongoing government mandate on a modernised act on fishing.

### 6.5.4 Difficulties finding the owners of fishing gear

Lost fishing gear brought up from the seabed would, in many cases, be returned to the owner if they were marked more extensively than the current Swedish regulations demand. Even when buoys are still attached, gear may be difficult to identify due to tangling making it hard to link markings with gear.<sup>133</sup> A demand to mark the gear itself could contribute to returning more gear to owners for reuse, which is preferable to recycling. Less gear would have to be reported as sea finds if the owner could be contacted and asked whether they want their gear back.

## 7 FURTHER INVESTIGATION

Here is a summary of the main questions that need further investigation, moving from describing problems to suggesting possible ways to deal with the issues.

### Responsibility and authority

One of the challenges is the lack of clarity about who is responsible for different issues.

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<sup>129</sup> Paragraph 6, Act on Sea Finds

<sup>130</sup> Discussions with several actors give the same picture: the interpretation of the demands of the Act on Sea Finds is stretched to, or beyond, the point of breaking the law.

<sup>131</sup> The crime of arbitrary conduct is found in chapter 8, paragraph 8 of the Criminal Code

<sup>132</sup> Paragraph 47, Fisheries Act

<sup>133</sup> Personal communication, 8-fjordar

This applies to responsibility between government agencies as well as responsibility on an operational level, where municipalities often have to deal with things when no one else does. There is some uncertainty among the government agencies about who should take responsibility for littering, which agency can issue regulations, and how to coordinate the work.

The operational responsibility lacks a corresponding authority for municipalities to act on the littering problem. How to increase authority is an open question at this point, but is briefly mentioned in the points below.

### **Boat register**

For a short while, from 1988 until 1992, there was a register of recreational boats, and reintroducing such a register has been proposed by several previous investigations. Of the comments made during this judicial inquiry, most have been in favour of a register to facilitate the identification of owners and thus simplify the disposal of derelict boats. Opposition to a boat register seems to come mostly from boat owners, and at least partly be due to fears of taxation on boats once ownership is registered.

### **Exemptions in the Act on Sea Finds**

It has been proposed that changes should be made to the exemptions in the Act on Sea Finds to routinely dispose of more boats and fishing gear, possibly by changing guidance on dealing with cases within the present legal rules.

### **An Act on Relocating Boats in Certain Cases**

The proposal, based on the Act on Relocating Vehicles in Certain Cases, has been made but has not been passed by parliament. It may be worth looking into the possibilities for such a development.

### **Marking of fishing gear**

To facilitate dealing with fishing gear, a demand to mark the gear itself could be introduced, as is currently the case on Lake Vänern.<sup>134</sup> If the owner of found gear can be identified, useable gear can be returned to the owner. In addition, the administrative burden of dealing with lost gear could decrease if ownership is known and recycling can commence at once if the gear is not reused.

Such marking regulations would be in line with EU rules. Changes are not required in statutory law, but could be dealt with by the Agency for Marine and Water Management.

### **Share of costs**

While not a purely legal issue, costs are an aspect of many of the challenges presented in this report. In accordance with the polluter pays principle, owners should primarily bear the costs of recycling recreational boats and fishing gear. When owners are unknown, the municipalities are often left to pay, which in some cases can become a significant burden. It is also an obstacle to working actively with these issues, since things become more expensive the harder they work.

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<sup>134</sup> See section 6.2.5

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Justitiekanslerns beslut 12 jan 2004 Diariennr: 383-02-21



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