

Harbour Authority Fee Collection Unofficial Tips

Harbour Policy and Program Planning
Small Craft Harbours



Disclaimer

This document is not intended to replace professional advice.

If legal advice or other expert assistance is required with respect to a specific issue or circumstance, the services of a competent professional should be sought.

The content of this document should not be taken as being either official or unofficial policy of any governmental body.

Section 1: Introduction

1.1. Purpose of this Document

The information in this document was compiled by Small Craft Harbours (SCH) of the Department of Fisheries and Oceans (DFO) in response to requests from Harbour Authorities for assistance in their fee collection efforts. It is a cooperative effort amongst SCH Headquarters, SCH Regions, Harbour Authority Advisory Councils, and individual Harbour Authorities across the country to promote a dialogue on this issue.

To reflect this important dialogue, anonymous quotations from contributors will appear in the following pages.

This document is a work in progress. The ultimate goal is to suggest useful ideas that may make the task of fee collection easier for Harbour Authorities (as it is their direct responsibility). The document summarizes how a sample of Harbour Authorities deal with issues related to fee collection.

Continued discussion and evaluation of the ideas contained herein is recommended.

The ideas in these pages should not be interpreted as official or unofficial direction or counsel by any government body.

1.2 How this Document is Organized

This document is comprised of several sections:

- **Section 1: Introduction**, describes the ultimate purpose of the document, its organization, and the process of gathering, evaluating and distributing possible ideas.
- **Section 2: The REAL Problem**, outlines some of the real issues which make fee collection difficult for Harbour Authorities.
- **Section 3: General Tips** discusses a number of possible fee collection strategies, many of which are already successfully used by Harbour Authorities.
- **Section 4: Strict Policies** discusses the need for developing and following strict policies related to fee collection.
- **Section 5: Payment Options** discusses the use of various fee payment options.
- **Section 6: Other Ideas** discusses additional options for fee collection.
- **Section 7: Ideas Requiring Caution**, discusses some fee collection strategies that, at minimum, should be used with extreme care.
- **Section 8: Ideas to Avoid**, discusses some fee collection strategies that really should be avoided at all costs.
- **Section 9: Sample Documents**, includes copies of documents (berthage agreements, collection policies, invoice letters and notices) which can serve as models for Harbour Authorities.

1.3 Creating and Updating this Document

The majority of the ideas contained in the *Harbour Authority Fee Collection – Unofficial Tips* come from the Harbour Authorities themselves, as the ones the most familiar with the problems and possible solutions. During October 2003, the following survey was distributed through e-mail to as many Harbour Authorities as possible.

Survey Questionnaire: Collecting User Fees

1. Does your Harbour Authority have trouble collecting user fees? If yes, what types of difficulties exist? If no, what explains your success?
2. What methods have you tried that have worked for your Harbour Authority? Do you have any recommendations for other Harbour Authorities? Do you have any “success stories” to share?
3. What are some methods you have tried that have not worked for you? What should be avoided? Do you have any “negative” stories to share?
4. Would you be interested in learning more about this subject?

Further, telephone interviews were conducted based on this survey during the same time period, and much valuable information was obtained. The need for this document was also reaffirmed.

“I feel this is a very worthwhile subject and that all HA’s could benefit from learning more on collecting user fees.”

Harbour Authority – Pacific Region

“I would be greatly interested in learning more about this subject. As a new Harbour Supervisor -- still in the learning process – any information that would help me would be greatly appreciated.”

Harbour Authority – Newfoundland Region

Contributions and suggestions received from the following stakeholders have been incorporated into the latest version of the document:

- SCH Regional stakeholders (November 2003)
- Participants at the National Harbour Authority Advisory Council (NHAAC) meeting (November 2003)
- SCH Regional representatives (December 2003 / January 2004)

We would like to thank everyone who has made a contribution.

Procedures for Updates

Here are some agreed upon procedures for updating the *HA Fee Collection – Unofficial Tips* document:

- **Communications:** Direct communications on this issue by Small Craft Harbours HQ to Harbour Authorities will be coordinated through the SCH Regions.
- **Frequency:** This document will be updated on an ongoing basis, namely, whenever there is a sufficient amount of new material to add.
- **Discussion and Evaluation:** It will be the responsibility of Regional Directors to discuss and evaluate updates to the *HA Fee Collection – Unofficial Tips* document.

- **Notification of Updates:** Update notifications will be given on the HA Discussion Forum (Yahoo Groups) and through other means.
- **Distribution:** The latest version of this document will be available on the Small Craft Harbours web site. Paper versions will be distributed to Harbour Authorities twice per year through the National Harbour Authority Advisory Council (NHAAC).

Once again, the *Harbour Authority Fee Collection – Unofficial Tips* document is meant to be a work in progress. We are currently evaluating and revising the ideas gathered so far. Further, we are continually seeking new and effective ideas to share with and amongst Harbour Authorities related to fee collection. We encourage you to contact us with your ideas.



Section 2: The REAL Problem

There are many problems associated with fee collection:

2.1 Resistance to Paying

Many fishers are against having to pay fees, especially in those many areas where the unemployment rate is high and/or incomes are very low. Some feel that they pay enough for fishing licence fees. Further, fee payments may be a new development for fishers with the creation of a Harbour Authority. The first few years of existence can be more difficult for Harbour Authorities, especially if fees had not been charged in the past.

2.2 Transient Users

There are often more problems with pleasure craft than fishing boats. Harbour users from outside the community, especially owners of pleasure craft, may not know the payment rules, or may otherwise feel that they should not have to pay for spending only a short time there.

2.3 Discomfort

In a tight-knit community, where everyone knows each other, it is difficult to pursue payment of fees when the users are either relatives or friends.

2.4 Revenue Problems

Harbour Authorities can cease operations due to a lack of funds. Delinquent harbour users may not realize how important their payments are to the provision of services and, ultimately, the continued operation of the harbour.

2.5 Confrontational Situations

Sometimes fee collection can lead to confrontational situations. In some circumstances, the danger of violence (threats, assaults) exists.

2.6 Fatigue

Overdue accounts lead to high frustration levels. Staff and volunteer time is required to monitor accounts, do follow-ups, and to develop and implement policies.

2.7 Capacity Building

Collections are often more difficult than necessary due to a lack of experience or training in that area. Harbour Authorities acknowledge that they would benefit from receiving training (e.g., peer management, negotiation skills, and available resources) and sharing information. Discovering the correct ways to handle fee collections will improve efficiency, and perhaps speed up response times.

This document is one step toward building the capacity in the area of fee collection.

2.9 In Our Own Words...

“As ...harbour manager, I would like to state that, while our non payment amounts are relatively low (\$2500 over 4 years of operation with an annual cash flow of about \$80,000), the majority of our time administratively is spent chasing the few non payers that we do have.”

Harbour Authority – Pacific Region

“We send bills out to boat owners and they get tossed in the garbage and no reply.”

Harbour Authority – Newfoundland Region

“Taking action in order to get paid is difficult for members of the BOD because many people are friends and/or members of the family.”

Harbour Authority – Québec Region

“We are a small group with little or no resources and have had a difficult time with collections. When approached, boat owners ignored the fact that we exist. DFO was asked for help and basically told us to take them to court and, with no monies coming in, this wasn't possible.”

Harbour Authority – Newfoundland Region

“Here..., fishermen move from harbour to harbour and they do not pay. Thus, it is disturbing for the fishers who pay and it is going to end up causing us of problems.”

Harbour Authority – Québec Region

Section 3: General Tips

The following ideas have been found to be effective in collecting harbour fees. Most were suggested by Harbour Authorities themselves. **Continued discussion and evaluation of the ideas contained herein is recommended.**

3.1 Take Prompt Action

For most people, ensuring fee collection and pursuing delinquent accounts is an unpleasant task. It is easy to ignore the situation, or delay action until there is a serious problem involving considerable sums of money. Prompt action can lead to prompt results, or, at least, can prevent larger problems.

Months Past Due	Probability of Collecting
3 Months	69.6%
6 Months	52.1%
12 Months	22.8%

Source: Commercial Collection Agency Association at the address <http://www.ccascollect.com/>

Surveys show that the probability of collecting a delinquent account drops dramatically with the length of delinquency. Harbour Authorities should not set the precedent that non-payment for extended periods of time is acceptable, by not contacting users about non-payment.

“Over the years I have noticed that if management tries to be too accommodating to a problem user, the situation usually escalates out of control and in the end you still have to enforce harbour policies. By avoiding the situation you only made a bad situation worse. Don’t bury your head in the sand!”

Harbour Authority – Pacific Region

3.2 Be a Personal Presence at the Harbour

It is rather simple to ignore a letter in the mail or to avoid a telephone call. A person at the harbour in an official capacity, especially at fee payment time, could be an effective incentive to pay. The Harbour Authority members should be an accessible presence at the harbour and on the docks, people who should know the harbour users, talk to them and cultivate friendships. Personal reminders about payments and acknowledgement for payments may help in fee collection.

It is a matter of public relations and business-client relations. As one Harbour Authority told us, in all circumstances, it is important to respect the harbour users.

“Generally, [we]... experience very little problem collecting fees. This can be attributed to good communication to the harbour users advising them of harbour rate structure through methods such as quotes, dock orders delivered to vessels upon arrival, and by contacting the user by phone to encourage an advance rate, which is a monetary savings for them”.

Harbour Authority – Pacific Region

3.3 Demonstrate Good Value to Users

Harbour Authorities that are well-run and follow good business practices generally have less difficulty collecting fees. Holding regular elections, seeking member input, transparency of operations and finances, and good financial controls are all examples of good business practices.

“Users are more likely to pay their fees when they feel that they are contributing to a reputable organization that is well managed and providing services that are valued at the community level”.

Newfoundland and Labrador Region

3.4 Increase Awareness of the Importance of Payment

If the Harbour Authority does not press delinquent users for fee payment, the harbour users may not think that the Harbour Authority really needs the money. Payments for services are the primary funding source for most Harbour Authorities. The funds are essential for operating the harbour, an important part of any community. Harbour users who understand these facts may be more diligent about making payments on time.

“Convince users of the importance of paying, as it allows them to have some important services.”

Harbour Authority – Québec Region

3.5 Post Reminders

The Harbour Authority can post general reminders about fee payment due dates, perhaps in local stores. General notices can be left on the boats themselves.

3.6 Timing

It is best for Harbour Authorities to send out the bills for the season when they know the harbour users will be able to pay, such as near the beginning of the fishing season. When invoices can be processed as soon as possible, clients will perhaps receive them early enough to better budget for payment.

3.7 De-Personalize the Issue

It is often tempting to be lenient with the client, who is probably well known to the Harbour Authority members. Avoid this, since the issue will need to be addressed eventually. Showing empathy for the client having problems is appropriate, but it should be stated that payment is expected as soon as possible. When possible, someone involved with the Harbour Authority who is less well known to the client can make contact regarding fees. This person should be courteous, but direct. Telephone calls should begin by stating that the call is on behalf of the Harbour Authority. Also, the discussion should centre on the outstanding bill, not the debtor. Finally, citing an existing Harbour Authority policy can de-personalize the situation.

3.8 Understand the Situation

It is important to quickly understand the reason for non-payment. The inability to pay is the common reason, of course. Yet, non-payment may be deliberate, being connected to unresolved matters, such as the quality of service, price, or other business-related dispute. If disputed matters can be resolved quickly and satisfactorily, payments will then be made. In the meantime, partial payment can be requested, with the remainder to be paid upon resolution of the situation.

3.9 Ask the Right Questions and Listen

Asking the right questions on the telephone or in person can make fee collection more successful. Here are some tips:

- Ask questions instead of making demands:
 - YES:** Will you call me once you have mailed the cheque?
 - NO:** You'd better mail that cheque right now!
- Always ask for the full payment:
 - YES:** What time this afternoon can I expect you to come in to pay the full amount owed?
 - NO:** How much can you pay right now?
- Always ask on what specific date the Harbour Authority can expect the payment. Tell the client you will call to follow up if the payment is not received by that date.

- Ask open-ended questions instead of yes-no questions, to involve the harbour user in finding a solution:
 - YES:** What is your plan to settle your account with us?
 - YES:** How much time will you need to pay all your fees?
 - NO:** Will you pay by tomorrow?
- Don't offer the debtor an excuse for non-payment:
 - NO:** Didn't you receive the first invoice in the mail?
 - NO:** Did you think your partner already wrote the cheque?
- Instil a sense of urgency in the client by using words such as "now," "past due," "priority," and "today."
- Ask questions of the person who is in a position to sign the cheque or authorize payment. For example, the boat owner may hire a bookkeeper to pay the bills. Talk to that person.

By listening carefully to the answers offered, the Harbour Authority can have a better idea if the user will pay and take the appropriate next steps to collect the fee.

3.10 Persistence

The Harbour Authority should remain persistent, sending out bills and invoices, even if it may seem that payment is becoming less and less likely. This will show that the Harbour Authority takes fee collection seriously, which may have a positive impact on other users.

“When we first started in 1998 we did have problems with collections of fees, as fishers forgot to pay or felt that they shouldn’t have to pay, but our board stayed by the messages given by Small Craft Harbours and tried collecting by second notices and then letters of not being able to use the facilities. We received most of our money that year; I think only five never paid and they have never been back to our facilities.”

Harbour Authority – Newfoundland Region

Section 4: Strict Policies

Harbour Authorities should develop and follow strict procedures related to: collecting user information, user agreements, accounts receivable / collections policies, and advertising these policies to harbour users.

4.1 Collecting User Information

Obviously, it is important to obtain as much contact information as possible from harbour users, in case you need to track them down for non-payment. Obtaining this information is much harder after a problem occurs. Detailed contact information would also be required in an emergency, so the request can be framed in those terms.

Also, if the prospective harbour user is reluctant to provide details during the information gathering stage, this can be a warning sign of possible future problems. Do follow up if you are in doubt about information provided.

“For [our harbour]..., I open a file for all those who request service. They thus sign a registration document and I hand them a general copy of our regulations.”

Harbour Authority – Québec Region

4.2 User Agreements

It is essential that Harbour Authorities have harbour users sign a detailed user agreement, which outlines the collection policy of the Harbour Authority. The customer should clearly understand what the potential additional charges will be for late payment. This contractual agreement will empower Harbour Authorities to take specific actions to collect on delinquent accounts.

See 5.5 Link Payments to Services

See 9.1 Berthage Agreements

“All moorage agreements issued by HA's should be as common a document as possible, with similar clauses for non payment, indemnification, seizure and sale.”

Harbour Authority – Pacific Region

4.3 Accounts Receivable / Collections Policies

It is essential that Harbour Authorities develop and follow an Accounts Receivable Policy. Accounts receivables should be kept up-to-date and continually reviewed, so that overdue accounts are identified and collection efforts are initiated as soon as possible. Accurate record-keeping will help the Harbour Authority determine each client's reliability in paying.

Accurate records should be kept for payments, too. The worst thing would be to hire a collection agency when the bill really was paid!

Many Harbour Authorities do not have a collection policy. However, developing and following a detailed, written collection policy can bring desired results. The collection policy should be made known to all and should be strictly and consistently followed. Alternatively, once the Harbour Authority gets the reputation of being lax in collecting money owed, it will become more and more difficult to collect from harbour users.

See 9.3 Collections and Operational Policies

See 9.4 Invoice Letters

See 9.5 Notice Letters

“[Our board]... implemented a strong harbour policy and procedure document governing harbour fees and collections. By being consistent with the enforcement of these rules & regulations harbour users eventually get on board or tend to relocate their vessel to a harbour where the environment best suited to their needs. [The Harbour Authority]... maintains the harbour premises in an aesthetically pleasing manner; management deals with situations in fair and practical manner and is consistent with the enforcement of all rules and regulations.”

Harbour Authority – Pacific Region

“These steps can take the following form:

- 1. Advise the user that he must pay for services provided at the harbour. [In our case]..., I open a file for all those who request service. They then sign a registration document and I hand them a copy of our general regulations.*
- 2. We send them an invoice which serves as a first notice and we keep that invoice in the user’s file, stating the expected date of payment.*
- 3. If the payment is not received, a second invoice is sent out, serving as a second notice, stating the expected date of payment.*
- 4. If the payment is not received after the second notice, a third is sent out, in which the administration fees are reported or we send to the user a “without prejudice” letter via registered mail in which we encourage the user to take measures to pay and we offer this person payment options with us in order to, by so doing, avoid going to court.*
- 5. In case of non respect of the “without prejudice” letter, the result is that the president calls the person in order to attempt to, by these means, find a way to reach an agreement.*
- 6. As a last resort, we take the user to court in order to obtain payment.”*

Harbour Authority – Québec Region

Please note that collections policies should be “incremental.” This means that the collection techniques should be simple at first, moving toward more serious consequences for delinquent users as time goes on. For example, if most pay after receiving a second-notice, then there is less reason to worry about those clients. The Harbour Authority can show some leniency if they know the user will pay, avoiding the need to be heavy-handed where it is not warranted.

4.4 Advertising Policies to Harbour Users

Harbour Authorities should take the first and every opportunity to inform clients of its payment and collection policies, which will lessen fee collection problems, especially with harbour users from outside the community. Harbour Authority volunteers should be prepared to explain the policies clearly and accurately. Providing the customers with written policies is an effective method to eliminate misunderstandings. These policies should also be printed on all Harbour Authority statements and invoices. Policies can even be displayed in obvious places at the harbour site.

Section 5: Payment Options

This section discusses the use of various fee payment options.

5.1 Convenient Payment Options

A Harbour Authority in Pacific Region has a secure “Honour Box,” whereby fishers can pay moorage fees even when staff or volunteers are unavailable. Where possible, accepting cash, cheques, and the use of bank cards and credit cards can make payment more convenient for users.

5.2 Advance Payment

Demanding advance payment eliminates unpaid fees from the outset. A discount can be offered to users who pay in advance, as this practice would save time and money for all parties.

At minimum, Harbour Authorities can insist that future mooring and other services will require that delinquent harbour users pay in full their outstanding balances and henceforth pay cash in advance.

5.3 Late Payment Charges

At one Harbour Authority in the Pacific Region, if a harbour user does not pay within three months, they begin charging the higher daily fee rate. Others add a \$25 additional fee or a 15% “management fee” (with a minimum service charge) if the bill is not paid on time. For users who are capable of paying, these are incentives to pay on time.

5.4 Alternative Payment Options

Being flexible in terms of payment options could be a solution for individual harbour users. Incremental payments are one option, if necessary, in individual cases. However, it is important to use this option carefully. Too many clients paying by increments will diminish cash flow for the Harbour Authority, and may establish precedents that undermine existing collection policies and the perceived fairness of the payment system amongst harbour users.

5.5 Link Payment to Services

The Harbour Authority can make access to its services conditional to fees being paid. For example, one Harbour Authority in the Maritimes Region, which owns its own fuel system, ties access to fuel to payment of berthing and other fees. In this case, it is mandatory to use the harbour authority-owned fuel system.

Denial of other services (wharfage, parking or roadway access, storage space, and hydro) has met with a great deal of success. At another Harbour Authority, also in the Maritimes, wharf space for lobster equipment is denied if the user hasn't paid fees by the beginning of the season.

DFO Legal Services was consulted on whether or not Harbour Authorities can legally refuse access to a user. According to the opinion received, keeping the harbour publicly accessible is one of the obligations imposed on Harbour Authorities in the *General Lease* and through Section 6 of the *Fishing and Recreational Harbours Act*. Nevertheless, a well-written berthage agreement ("License") between a Harbour Authority and a user, which contains a specific "termination clause" or "payment as a condition clause", will take precedence in these situations. By not paying their fees, it would be the users who are defaulting on a condition of this "license", and thereby restricting their own rights to access.

Nevertheless, it is recommended that each Harbour Authority seek independent legal council for clarity on specific situations.

5.6 Different Terms for Transient Users

Since it is sometimes more difficult to collect from transient users, some Harbour Authorities charge them a higher rate, to better cover the overall risk.

Also, some Harbour Authorities only offer short-term berthage in the off-season to transient recreational users, to free up spaces for longer-term berthage when the fishing season begins (fishing users often pay more consistently).

5.7 Payment via Third-Parties

Instead of having the fishers pay for services rendered, an arrangement could be made so that the fish buyer, processor or factory will take the harbour fee out of their payment to fishers, which would be much easier for all involved. The fishers would not need to have the money up-front, and payment will occur as soon as catch revenues are available to the fishers.

The receipts for the amounts can even be sent to the company, to distribute to the fishers. The effort to set up such an arrangement will be worthwhile, as payments will be on time and collection efforts will be unnecessary.

“In 1999 we developed a agreement to be signed between the fishers and the Harbour Authority that allowed the companies that the fishers sold to to deduct from their fish earnings the Harbour Authority fees and forward them to us. Almost 99% of the fishers sign this agreement before they start fishing and we send the invoice in about 30 days after fishing starts.”

Harbour Authority – Newfoundland Region

See 9.2 Third Party Payment Agreement

“Instead of making fishers pay for services rendered, we thought of having the purchaser or processor or factory, etc., pay us, which is easier.”

Harbour Authority – Québec Region

“The harbours must have a united front in apprehending these vessels. These vessels and owners must not be allowed to get away without paying.”

Tidal Currents, October 2003

Section 6: Other Ideas

6.1 Collection Agency

Overdue harbour user accounts can be sent to a professional collection agency. However, there are costs associated with this. The collection agency will keep a portion of the amounts collected, or charge a fixed fee, if the amount is rather small. This can save the Harbour Authority staff and volunteer time. One Harbour Authority suggested hiring a collector for all the harbours in a Region. Some people warn, however, that using a third party to collect the funds could generate ill-will.

“The best way we have found to collect over due accounts, is to put them into the collection agency.”

Harbour Authority – Newfoundland Region

“The Board discussed using a collection agency and felt that the percentage charged of what is collected was too high. The possibility of [only] collecting minimum payments was also likely.”

Harbour Authority – Newfoundland Region

6.2 Letter from Lawyer/Law Office

A single letter sent through a lawyer may be more effective than several sent by the Harbour Authority to non-paying harbour users. Going through a law office may be more expensive than a collection agency.

“The Board felt the best option was to go through a law firm, who would deal with all details and procedures. The Harbour Supervisor faxed the law firm a list of the delinquent accounts with mailing addresses, the dates, and reasons for the charges. In most cases, as soon as the customers received the first step of court action, the accounts were settled plus costs. These costs were included in the first step of court action papers from the law firm. By the second step of court action, all accounts were settled. The customers were charged the court costs of each step of action, so the longer they delayed paying, the more it cost them.

Letters had been sent to these customers before this action was taken to give them an opportunity to pay. A few did settle their accounts beforehand, but there were approximately twenty accounts turned over to the law firm. Most customers settle their accounts throughout the season, but we have a couple who are possibly looking at similar action next year. However, this number is reduced from twenty accounts to a couple of accounts.”

Harbour Authority – Newfoundland Region

6.3 Small Claims Court

Harbour Authorities can consider initiating an action in Small Claims Court to obtain delinquent harbour fees. In some circumstances, the wages of fishermen have been garnished. However, other Harbour Authorities find this option expensive and ineffective.

“The Board felt by using Provincial Small Claims Court, it would mean one of the Board members or the Harbour Supervisor would have to be available to go to court. Someone would have to be able to travel to ... (one hour drive each way) to have the court clerk sign the necessary forms. Once a court date was set and the Harbour Authority representative travelled ... for court, it could still be cancelled for some reason by the customer and process would have to be done again.”

Harbour Authority – Newfoundland Region

Section 7: Ideas Requiring Caution

The following ideas are being used by Harbour Authorities, but they do pose some difficulties and require, at minimum, extreme caution.

7.1 Peer Pressure

Some Harbour Authorities post the names of paid users publicly in order to put pressure on non-paid harbour users to settle their accounts. However, never directly single out a delinquent harbour user to cause embarrassment or to ruin a reputation. This can become a liability issue.

7.2 Work in Lieu of Monetary Payment

Work for the Harbour Authority in lieu of monetary payment has proven successful in individual cases. However, this can also become a liability issue. Also, in terms of equity, not all harbour users can be offered this option.

7.3 Directory of Delinquent Users

Clients, for whom fee payment has been a past problem, will likely continue their non-paying ways. As such, a Harbour Authority may share information on delinquent users to forewarn other Harbour Authorities about potential business problems at their own harbour. However, creating a registry of users who do not pay, shared through e-mail or telephone, could possibly damage the reputation of users. Caution is necessary.

7.4 Boat Seizures

A bailiff can be contacted in response to long periods of non-payment. Before anything is done, the boat should be surveyed, to make a value assessment of the condition of the vessel. A third party (namely, the bailiff) should be in attendance. The boat may be seized and sold through the bailiff if the owner cannot be found.

“One method applied in dealing with extremely overdue account is that... [the Harbour Authority]... has implemented a bailiff service to seize the vessel. Inevitably this facilitates attention from the owner and usually gets the account paid.”

Harbour Authority – Pacific Region

Please note that while some Harbour Authorities in the Pacific Region have cautiously used this strategy with some success, lawyers for the Central & Arctic Region have instructed Harbour Authorities to avoid boat seizures. The difference may be due to differing provincial legislation.

It is best to obtain a legal opinion for your jurisdiction prior to using this strategy.

7.5 Canadian Credit Bureau

Some Harbour Authorities will inform the *Canadian Credit Bureau* if harbour users do not pay their fees. This will be a serious strike against their credit rating, which will prevent them from other borrowing. This would be a significant liability for fishers, who often borrow as part of their regular business practices.

Given the seriousness of this possible strategy, it should be carefully weighed and should only be used in extreme circumstances.

7.6 Section 29 of the *Fishing and Recreational Harbours Regulations*

This Section of the *Fisheries and Recreational Harbours Regulations* can be enforced by enforcement officers at Harbour Authorities, at the point where the vessel wants to leave the harbour. Unfortunately, the catch is that the Section cannot be used to enforce payment of berthage fees while the vessel remains in the harbour.

“29. No person who is the owner or operator of a vessel shall permit the vessel to leave a harbour until all charges payable in respect of the vessel have been paid.”

Fishing and Recreational Harbours Regulations

The existence of this Section has led some users who are unwilling or unable to pay fees owed to abandon their vessels. This causes problems for Harbour Authorities, such as trying to track down owners and eventually having to bear the expense for removal.

7.7 Warehouse Lien Act

If the harbour user berthage agreement can be worded to include “storage”, Harbour Authorities may be able to act as a “warehouser” and thereby rely on the *Warehouse Lien Act* in their province to provide fee collection options.

Through the *Act*, the Harbour Authority may be able to claim a “lien” on the harbour user’s property “stored” within their facilities for the amount of all lawful and reasonable charges due. Ultimately, the lien can be exercised through the sale of goods by public auction.

“Lien: A charge upon real or personal property for the satisfaction of some debt or duty ordinarily arising by operation of law.”

Merriam-Webster dictionary

Unfortunately, there is some uncertainty surrounding the application of the *Warehouse Lien Act* to fee collection. On the one hand, there has been a court decision that seems to indicate that the *Act* may apply if incorporated into a berthage agreement. On the other hand, Pacific Region has received a legal opinion that states that the *Warehouse Lien Act* cannot be applied to vessels.

It is worthwhile for Harbour Authorities to become informed of their rights related to their respective Act.

There is a similar act in most provinces:

Province	Name of Act
British Columbia	<i>Warehouse Lien Act</i>
Alberta	<i>Warehousemen's Lien Act</i>
Saskatchewan	<i>Warehousemen's Lien</i>
Manitoba	<i>The Warehousemen's Liens Act</i>
Ontario	Seems to be none
Quebec	Seems to be none
New Brunswick	<i>Warehouseman's Lien Act</i>
Nova Scotia	<i>Warehousemen's Lien Act</i>
Prince Edward Island	<i>Warehousemen's Liens Act</i>
Newfoundland & Labrador	<i>Warehouser's Lien Act</i>

Territory	Name of Act
Yukon	<i>Warehouse Keepers Lien Act</i>
Northwest Territories	<i>Warehouse Keepers Lien Act</i>
Nunavut	<i>Warehouse Keepers Lien Act</i>

Source: <http://www.canlii.org/>

Section 8: Ideas to Avoid

The following are fee collection methods that should be avoided:

8.1 Misrepresentation

It is not allowed to use a fake identity on a letterhead, to claim to be a lawyer or law enforcement officer on the telephone, or to send out notices that may look too much like official court documents.

8.2 Ruining Reputations

It is forbidden to maliciously attempt to ruin a delinquent user's reputation by telling others of the debt. Information can be provided to collection agencies, who themselves are guided by strict rules. Collection letters and invoices need to be private and discreet. Harbour Authorities need to avoid exposing themselves to such liabilities.

8.3 Use of Intimidation

The use of intimidation or violence to collect (refusing to leave, using abusive language, and threatening violence) is wholly inadvisable. Also, it is not a good idea to make telephone calls too late or too early or too often, in case you are accused of harassment.

8.4 Section 15 of the *Fishing and Recreational Harbours Act*

This section of the Fishing and Recreational Harbours Act cannot be used by Harbour Authorities for fee collection, since it only applies to debts owed to the Crown. Harbour managers, even if they were appointed as enforcement officers, could not use this section of the Act to collect unpaid fees, due to the Harbour Authority only having a lease agreement with the Crown.

“15. Where an enforcement officer believes on reasonable grounds that

(a) any amount is due and payable under this Act for charges in respect of any vessel or goods, or

(b) any provision of this Act or the regulations relating to any vessel or goods has been contravened,

the officer may seize and detain the vessel or goods.”

Fishing and Recreational Harbours Act

Section 9: Sample Documents

9.1 Berthage Agreements

- Non-Assignable Berthage Agreement

9.2 Third Party Payment Agreement

- Agreement

9.3 Collection and Operational Policies

- Fee Structure & Collection Process
- Collection Policy
- Operational Policy

9.4 Invoice Letters

- Invoice Letters

9.5 Notice Letters

- Notice
- Notice
- Statement

9.1 Berthage Agreements

Anonymous Bay Harbour Authority

12345 Anonymous Street, P.O. Box 1234, Anonymous Bay, BC Z0Z 0Z0
Telephone: (000) 000-0000 Fax: (000) 000-0000 e-mail: abc@defgh.com

NON-ASSIGNABLE BERTHAGE AGREEMENT

VESSEL NAME: _____ CFV LIC#: _____

TYPE OF VESSEL: _____ LENGTH: _____ metres

LESSEE: _____ CONTACT PERSON: _____
OWNER NAME

MAILING ADDRESS: _____
Number, Street City Province Postal Code

Home Work
TELEPHONE:(_____) _____ TELEPHONE:(_____) _____
Area code number area code number

EMERGENCY CONTACT: _____
Name local telephone number

Anonymous Bay Harbour Authority (lessor) hereby grants to the undersigned boat owner, or duly authorized representative, berth and vessel storage space at the Anonymous Bay Harbour Authority Facility, for the vessel designated above on the following terms and conditions:

1. In consideration of the monthly moorage fee, at such rate as Anonymous Bay Harbour Authority (ABHA) specifies, ABHA grants the Lessee permission to use the above berth, for the term of the prepaid moorage fee. The Lessee agrees to pay a minimum of one month or more berthage PRIOR to berthing the vessel at Anonymous Bay Harbour.

2. ABHA may give ONE day's notice to the Lessee to vacate the berth allocated, as necessary for the efficient operation of the Harbour or for other causes such as safety, etc. ABHA reserves the right to shift the vessel to another berth without notice. A Lessee vacating the Harbour for a period of seven days or more is required to notify the Harbour Manager of the length of the expected absence.
3. Before expiry of this agreement, the Lessee may renew berthage by prepaying the required fees. If the Lessee gives prior notice, and quits the berth before the prepaid term has expired, the Lessee may request a refund and within one week be mailed a pro rata refund for the unused moorage (on pre-payments of three months or more).
4. The Lessee agrees to pay, in advance, for all (service charges) electricity and other utility or services which are furnished the vessel, at the established rates. ABHA does not guarantee continuity of utility services to a vessel, and specifically regarding electrical services, ABHA does not guarantee the continuity or characteristics of such service, or its compatibility with the vessel's electric circuit protector, if any.
5. RESERVED BERTHAGE may be granted to the Lessee, upon prepayment of the required fees for a term of not less than one year, and if there is sufficient room at the facility as determined by ABHA. Prior to the expiry of the term of prepayment, the Lessee may extend the term by prepaying for another term of not less than one year. Failure by the Lessee to pay all berthage fees and/or service charges in ADVANCE will result in loss of berth reservation privileges.

6. If the Lessee fails to pay in advance, a higher rate (as listed in the Payment Policy) for moorage will apply, and the Lessee authorizes ABHA to obtain such credit reports or other information as required to establish a credit account. If moorage remains unpaid, or if there is any breach or non-performance of any of the terms herein by the Lessee, this agreement may be terminated by Anonymous Bay Harbour Authority, who shall have a lien against the vessel for moorage and service charges and expenses, even though the vessel may have left the harbour.
7. The Lessee has examined the premises and finds them satisfactory.
8. In consideration of this agreement the Lessee agrees:
 - a. to abide by all applicable statutes, regulations, by-laws and rules, including Anonymous Bay Harbour Authority policies and directives, the Fishing and Recreational Harbours Act, and the Government Property Traffic Act;
 - b. to release, indemnify and hold harmless ABHA from all claims, demands, and suits, present and future, for damage to vessels caused by ABHA in an emergency;
 - c. to keep the area neat, clean, orderly and free from any flammable substances; and to store and maintain any flammable substances, pollutants, or hazardous materials necessary to the ordinary course of operations of the vessel in a manner acceptable to ABHA, and in accordance with ABHA directives and government regulations;
 - d. that the vessel must be in reasonable operating condition, as determined by ABHA;

- e. to moor, operate, and maintain the vessel and berth area in an appropriate manner and not to do or permit anything to be done by guests or crew which, in the opinion of ABHA, may be or may become a nuisance;
- f. to neither carry on any commercial enterprise, except as permitted for a licensed commercial fishing vessel, without the prior written permission of ABHA, nor live aboard the vessel without satisfying the Board of Directors for ABHA that they have complied with the appropriate Municipal By-laws and ABHA rules;
- g. on ceasing of this agreement, to remove the vessel immediately, and if not removed, to pay ABHA, on demand, all expenses incurred by ABHA in storing, moving, or mooring the vessel;
- h. that ABHA is not responsible for the care, custody or control of the vessel or equipment; the Lessee is responsible for looking after the vessel, gear, and equipment;
- i. that ABHA is not liable for any loss, damage or expense, including loss of use, to the vessel and equipment caused by the negligence of its employees acting within the scope of their duties or employment;
- j. to indemnify and hold harmless ABHA from and against all claims for loss, damage, expense, damage, expense, death or injury resulting from the act or omission of the Lessee or the Lessee's agents, invitees, or employees.

9.3 Collection and Operational Policies

FEE STRUCTURE & COLLECTION PROCESS OF THE HARBOUR AUTHORITY OF ANONYMOUS OCEAN

FEE STRUCTURE

Fleet Home: Berthage is \$50.00 for spring season & \$50.00 for fall season or \$100.00 per year. Bait sheds are \$100.00 per year and \$25.00 per tank per year. There is an additional \$25.00 added for each work day that a member does not participate.

Transient Vessels: Berthage is \$10.00 per day or \$50.00 per week or \$350.00 per season. Slip fee is \$5.00 per usage or \$50.00 per year.

NET 30 DAYS: Interest of 24% per annum (2% per month) on overdue accounts. Minimum Service Charge of \$1.50.

All of the above fees do not include PST/HST.
All of the above fees are subject to change.

METHOD OF COLLECTION

Step No. 1: An invoice is sent out to the user stating the charges for harbour usage.

Step No. 2: At the end of 30 days a second invoice is sent out to the user stating the charges for harbour usage. Interest is added beginning as of this date.

Step No. 3: At the end of 60 days of the original date (Step No. 1), a third and last invoice is sent out to the user stating the charges for harbour usage and a memo stating that if unpaid within 30 days, the debt will be submitted for collection. The debt will be automatically turned over to the Small Claims Court for action. The user will not be allowed to use the harbour facilities in the future without paying in advance. The court action will cause a fee of \$65.00 to be added and damage to the individual's credit rating.

Your present standing is indicated above.

9.3 Collection and Operational Policies

The Harbour Authority has the right to set rules, regulations and fees for these types of uses and to charge companies and individuals a fee for the privilege. If anyone refuses to comply with either the payment of fees or your rules, you can withdraw that person's user privileges. Should this occur, you must send a registered letter (or hand deliver) to the offending party informing them and specifically telling them that they are not to enter upon your property. A copy of the letter (see example in Appendix A) should be sent to your local Police. Should that person enter upon your property again, call the Police and ask that a charge be laid pursuant to Section 2(1) of the Petty Trespass Act (P.T.A.) ch. P-11, R.S.N. 1990 (see Appendix B). The offender is subject to arrest under Section 4 of the P.T.A. Hopefully this will only occur in extreme cases.

The same process applies to people driving onto your property; the driver is sent the letter and subsequent breaches are reported to the Police.

7.1.3 Collection of Fees

In other instances, you may collect unpaid fees and charges through Small Claims Court; a division of Newfoundland Provincial Court. This is a simple procedure which is meant to be used primarily by individuals and companies without the assistance of lawyers. Appendix B contains a copy of the legislation along with an example of how the process is started.

If the Harbour Authority wishes to do so, it can place delinquent accounts with one of the many collection agencies operating in the Province. They will charge you a percentage fee of what is collected, there will normally be no cost to you if there is no recovery, but ask just to be sure. A partial listing of Collection Agencies appears in Appendix C. For larger sums than that allowed under the Small Claims Act you will have to retain a lawyer to act for you. This is especially true if a vessel has to be arrested in order to collect fees; in that case legal action has to be started in the Federal Court of Canada. Your lawyer is familiar with the process, it is not something that the Harbour Authority should attempt on its own.

7.1.4 Non-Compliance with Harbour Authority By-laws

Every person doing business with the Harbour Authority (for example, fishermen, pleasure boat owners, plants, buyers, etc.) should be given a copy of any by-laws, operating rules, regulations and fees structures which the Board has passed. It should specifically state in the bylaws that breaches may result in loss of privileges. It is strongly recommended that non-payment of fees to the Harbour Authority be cause for suspension of privileges in the first instance, and then legal action to collect will have to be started.

9.3 Collection and Operational Policies

Mystery Sea Harbour Authority

OPERATIONAL POLICIES

December 7, 2001

1. Introduction

This is an operational policy for Mystery Sea Harbour, Department of Fisheries and Oceans, Small Craft Harbours Facilities, administered by the Mystery Sea Harbour Authority. Our wish is for these facilities to be safe and enjoyable place for everyone.

2. Responsibility

It is the responsibility of all vessel owners to register their vessel at the wharf Manager's Office. The wharf Manager administers the facility on behalf of the Mystery Sea Harbour Authority and may issue any order necessary to carry out the operation of the facility.

3. Change of Address:

The Wharf Manager is to be informed of any change of address or phone number. The Wharf Manager is also to be informed of any vessel being sold and be given the name and address of the new owner, if the vessel is to remain in Mystery Sea Harbour.

4. Berthage & Power:

Monthly Vessels: Our terms of Berthage & power are Net 30 days from date of invoice at our monthly rate.

Transient Vessels: Berthage & power are charged at the Day Rate, Vessel Owner may prepay to qualify for the monthly rate.

Vessels in Arrears: A 2% interest charged on past due balances. The Maximum amount that a vessel owner is allowed to be in arrears is set at the lower of \$300.00 or three months berthage, whichever comes first. Berthage and Power rates will revert to the Day Rate if account balances exceed the maximum allowable amount. Vessel Owners are invited to present reason for arrears at a Directors Meeting.

5. Vessel Safety:

The owners are responsible at all times for the safety of their vessels. A bow and stern line must be secured from each vessel to the float where feasible. The owners must make arrangements for daily inspections of their vessel. The owners must also leave the name and phone number of a contact person clearly visible aboard the vessel in case of emergency. The name and phone number of the contact person should also be registered with the Wharf Manager.

6. Emergency Service Charge:

Should the Wharf Manager be required to attend at an emergency, the service of the Wharf Manager and any assistants will be charged to the owner at a rate of \$25.00 per hour per person.

7. Electrical and Fire Marshall Restrictions:

Electrical cords must meet Fire Marshall standards. A twenty amp plug requires a minimum 12/3 wire size. All cords must be suitable for outdoor use. Cord caps must be corrosion resistant (yellow case-stainless steel contacts);

8. Vessels in Arrears:

a. The maximum amount that a vessel owner is allowed to be in arrears is set at the lower of \$300.00, or three months berthage, whichever comes first;

b. The Wharf Manager must notify the Mystery Sea Harbour Authority Board of Directors whenever a vessel owner exceeds this limit;

c. The Wharf Manager is to automatically send a “NOTICE OF DELINQUENT ACCOUNT”-PAYMENT SCHEDULE, outlining payment options in policy #7(a) and remains at the dock. The 1st Notice is to be sent out in the first week of becoming a delinquent account, 2nd Notice follows in 15 days. Final notice follows 15 days from 2nd notice and shall be double registered.

d. The wharf manager is automatically sent a “*Notice of delinquent account*”-Collection Agency, requesting payment, or setting up a payment schedule with the wharf manager to the owner after the vessel is in arrears as outlined policy #7(a) and has left the dock. The 1st Notice is to be sent out in the first week of becoming a delinquent account, 2nd Notice follows in 15 days, Final Notice follows 15 days from 2nd notice and shall be double registered.

e. The Wharf Manager is to notify the Treasurer if the vessel owner does not respond within two weeks to either the “Notice of Delinquent Account”- Payment Schedule or “Notice of Delinquent Account” – Collection Agency. The Treasurer is to forward Account information to either a Collection Agency or as outlined in 7(f) if the vessel remains at the dock.

f. The Treasurer must notify the Mystery Sea Harbour Authority Board of Directors whenever a vessel owner does not respond to the Collection Agency. Then contact the bailiff requesting that an eviction notice be served.

g. Accounts in arrears are subject to 2% interest per month (24% annually) to be included on the monthly statement.

Amended September 20, 2000; March 26, 1999 February 24.2001

9. Payment Schedules for Delinquent Accounts:

Any vessel owner who is overdue on his mortgage payments but is attempting to pay off the debt, must comply with the following schedule:

- a. In addition to the current month's moorage being paid in full, the vessel owner must pay a minimum of 10% (ten percent) of his back moorage per month;
- b. If the vessel owner does not comply with this schedule, the wharf Manager will request that the vessel leave the dock;

Amended October 6, 2000 February 24, 2001

10. Prepaid Vessels:

For those prepared owners who let their balance fall below a credit balance, for the rate for moorage automatically reverts to the daily rate as per schedule "A", policies and procedures. (A grace period of up to seven days be allowed when a vessel owner is out of town or has not received notice that his prepaid status has run out).

Amended September 20, 2000; August 16, 2000 March 14, 2001

9.4 Invoice Letters

Harbour Authority of Unknown Lake

Dear Sir or Madam:

RE: Invoice Number _____, \$ _____

Reference is made to our correspondence dated _____ concerning settlement of the above invoice in the amount of \$ _____ to which no response has been received. This amount is now _____ days past due.

Please forward a remittance in full settlement to the following address or advise by return mail why you are unable to do so.

Yours truly,

9.4 Invoice Letters

Harbour Authority of Unknown Lake

Dear Sir or Madam:

RE: Invoice Number _____, \$ _____

Reference is made to our correspondence dated _____
and _____, concerning the above account which is now _____ days
past due.

Unless we receive payment in full within 10 days from the date of this letter, we will have no alternative but to refer this account to the Provincial Court of Newfoundland, Small Claims Court. Please be governed accordingly.

Payments should be forwarded to the following address:

Yours truly,

9.5 Notice Letters

Please

Pay moorage at Honour
Box or Contact the Harbour
Manager about Moorage

Phone: 000-0000

Cel: 000-0000

Thank you we appreciate
your cooperation

Phantom Harbour Authority
Box 00
Phantom, B.C. Z0Z 0Z0

9.5 Notice Letters

Sleepy Marsh Harbour Authority
Box 0-0 Sleepy Marsh
Sleepy Marsh, B.C. Z0Z 0Z0

November 1, 2003

REGISTERED LETTER

Dear _____:

Re: Moorage for 30' _____

This letter is to advise you that according to our records, moorage has not been paid for the previous six months. The amount outstanding as of October 31, 2003 is \$1280.00.

The policy of the S.M.H.A. states that:

“notification will be sent out via registered mail to the owner of a vessel whose moorage is outstanding for six months. The owner is given 90 days to clear the account, plus accrued moorage. Failure to do so results in the Board possessing the vessel and disposing of it in an appropriate manner.”

Please contact me regarding your intention to promptly clear this account.

Yours truly,

President, S.M.H.A.

9.5 Notice Letters

No Name Harbour Authority		Statement			
P.O. Box No Name City Newfoundland Z0Z 0Z0		DATE			
BILL TO		10/31/2003			
		AMOUNT DUE	AMOUNT ENC		
		\$40.25			
DATE	DESCRIPTION	AMOUNT	BALANCE		
03/31/2003	Balance forward		\$40.25		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
\$0.00	\$0.00	\$0.00	\$0.00	\$40.25	\$40.25

Disclaimer

This document is not intended to replace professional advice.

If legal advice or other expert assistance is required with respect to a specific issue or circumstance, the services of a competent professional should be sought.

The content of this document should not be taken as being either official or unofficial policy of any governmental body.

AB 5905-10-9

AB 5905-1

DRAFT

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FOR INFORMATION ONLY
NOT OFFICIAL POLICY