



# State of Hawai'i

## Abandoned and Derelict Vessel (ADV) Legislative and Administrative Review - 2015

NOAA Marine Debris Region:  
Pacific Islands



### Definition of a Vessel

Hawai'i revised state statutes define a "vessel" in the following manner under Haw. Rev. Stat. § 200-23:

**Vessel:** means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

Hawai'i Administrative Rules (§ 13-230-9), under the Department of Land and Natural Resources (DLNR), provide a similar definition for a vessel but it does not include any limitations for seaplanes.

### Definition of an Abandoned and/or Derelict Vessel

The State of Hawai'i does not provide an explicit definition for abandoned or derelict vessels; however under Haw. Rev. Stat. § 200-41(a):

"Any vessel may be deemed abandoned if the vessel has been moored or otherwise left in the waters of the State or on public property contrary to law or rules having the force and effect of law, or left on private property without authorization of the owner or occupant of the property".

Hawai'i statutes do provide a definition for derelict vessels under Haw. Rev. Stat. § 200-48.

**Derelict Vessel:** A vessel which has been left unattended for a continuous period of more than twenty-four hours is a derelict if:

- 1) The vessel is sunk or in immediate danger of sinking, is obstructing a waterway, or is endangering life or property; or
- 2) The vessel has been moored or otherwise left in the waters of the State or on public property contrary to law, or rules having the force and effect of law, or the vessel has been left on private property without authorization of the owner or occupant of the property.

Both of these statutes set forth a series of conditions that must be met in order to designate a vessel as abandoned or derelict provided they meet the above requirements; which are covered under the Designation of Abandoned and/or Derelict Vessels section (below).

### Formal State Program for Abandoned Vessels

Although the State of Hawai'i does not have a formal abandoned and derelict vessel program that is permanently funded, the DLNR does have a program that addresses abandoned vessels through a collection of laws under Haw. Rev. Stat. § 200. These laws have provisions that deal specifically with abandoned and derelict vessels that govern the designation, impoundment, removal and disposal processes. Despite not having a formal and funded program the DLNR



actively identifies and removes abandoned and derelict vessels from harbors and immediately deals with vessels that become grounded on reefs or in imminent danger of breaking apart.

Current laws pertaining to abandoned and derelict vessels in Hawai'i do not specifically address the legality of abandoning a vessel. Since state laws do not explicitly make it illegal to abandon a vessel, no violations or penalties are defined under Haw. Rev. Stat. § 200.

**Designation of Abandoned and/or Derelict Vessels**

Pursuant to Haw. Rev. Stat. § 200-41(a), any vessel may be deemed “abandoned” if the vessel has been moored or otherwise left in the waters of the State or on public property unlawfully, or left on private property without authorization of the owner or occupant of the property if:

- 1) The vessel's registration certificate or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;
- 2) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
- 3) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner;
- 4) The vessel registration records of the DLNR and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined; or
- 5) The requirements of section 200-52 are met (see Specific Location Factors or Limitations section).

If a vessel is found on public property, according to Haw. Rev. Stat. § 200-41(b), it can be designated as abandoned by the chairperson/director of the state department or agency that has jurisdiction over the public property, or by a county, through its mayor or mayor’s designee. If a vessel is designated as abandoned by a county the DLNR is required to provide to the county access to the department's vessel registration and marine document records or those of the United States Coast Guard.

Pursuant to Haw. Rev. Stat. § 200-48 (see definitions above), a vessel is considered “derelict” if it has been left unattended for a continuous period of more than twenty-four hours and the vessel is 1) sunk or in immediate danger of sinking, is obstructing a waterway, or is endangering life or property; or 2) has been moored or otherwise left in the waters of the State or on public property unlawfully or the vessel has been left on private property without permission, and if:

- A) The vessel's registration certificate or marine document has expired and the registered owner no longer resided at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;
- B) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
- C) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner; or
- D) The vessel registration records of the department and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined.



### **Responsibility for Removal of Abandoned or Derelict Vessels**

Once a vessel is deemed abandoned under Haw. Rev. Stat. § 200-41(a), the appropriate agency official can direct and cause the vessel to be taken into custody and disposed of pursuant to the provisions provided under Haw. Rev. Stat. § 200. Any vessels abandoned on private property become the responsibility of the private property owner and not of the State (Haw. Rev. Stat. § 200-41(c)).

If a vessel is designated as derelict under Haw. Rev. Stat. § 200-48, the State can cause it to be immediately taken into custody and take responsibility for its removal and disposal (Haw. Rev. Stat. § 200-49(a)).

In addition, pursuant to Haw. Rev. Stat. § 200-47.5(b), the DLNR may also assume control (with no liability) of any vessel that is grounded on a coral reef or in imminent danger of breaking up and cannot be removed by the owner within 24 hours in a reasonably safe manner. The Department can also assume control of the vessel if they are not able to notify the owner or their representative after making a good faith effort to do so.

### **Removal and Disposal Requirements/Guidelines**

After designating and taking custody of an abandoned vessel the Department is required to immediately post a written notice on the vessel and send a duplicate, by registered or certified mail, to the owner registered with the Department or documented by the U.S. Coast Guard, or any recorded lien holder or operator of the vessel at their last known address on record (Haw. Rev. Stat. § 200-42). The notice must contain:

- a brief description of the vessel;
- the location of custody;
- and the intended disposition of the vessel, if not repossessed within twenty days after the mailing of the notice.

The owner, lien holder, or operator of the vessel has 10 days after receipt of the mailed notice in which to file a written request for an administrative hearing to contest the vessel impoundment. If a hearing is requested it must be held within five working days of the Department's receipt of the written request.

Pursuant to Haw. Rev. Stat. § 200-43, if an abandoned vessel is not repossessed by the owner or other interested party within the twenty day period provided by the notice, the vessel can be sold at public auction, through oral tenders, or by sealed bids; providing that a public notice of the sale has been given at least once and the sale of the vessel is not held less than five days after the notice is given. If no bids are received at public auction the Department can sell the vessel by negotiation, dispose of it as junk, or donate it to any governmental agency.

As provided for under Haw. Rev. Stat. § 200-44, any person with an interest in a vessel designated as abandoned and taken into custody may repossess the vessel prior to the date of public auction if they pay the state or county agency all costs associated with the taking, including towing, handling and storage charges, appraisal and advertising expenses, and any other fees or expenses incurred. If the person taking possession is not the registered or documented owner, in addition to paying the costs, they must also post security satisfactory to



the state or county agency in an amount not exceed the value of the vessel; which, if not forfeited, shall be returned within two years after receipt.

If the appraised value of an impounded vessel is less than \$5,000 then a public auction is not required and the Department can sell the vessel by negotiation, dispose of it as junk, or donate it to any governmental agency (Haw. Rev. Stat. § 200-45). Pursuant to Haw. Rev. Stat. § 200-47, the portion of the sale proceeds that are used to cover the expenses of the auction, and any other expense incurred by the agency in taking and disposing of an abandoned or derelict vessel shall be deposited into the boating special fund or other state or county fund, as appropriate, from which the original expenses were paid. Any remaining balance gets deposited into the general fund of the State; however, the owner of the vessel may attempt to recover any remaining balance from the State if they file a claim with the department of budget and finance within one year after the execution of the bill of sale and all liens on the vessel have been satisfied. If the proceeds of the sale are insufficient to cover the expenses incurred by the agency during the taking and disposal of the vessel, the agency has the right to file an action against the registered or documented owner or any other interested party for the deficiency in an environmental court.

If the State of Hawai'i, through the DLNR, designates and takes a derelict vessel into custody they are required under Haw. Rev. Stat. § 200-49 to, as soon as reasonably possible:

- 1) Give public notice of intended disposition and procedure for requesting an administrative hearing;
- 2) When possible, post a notice of intended disposition and procedure for requesting an administrative hearing on the vessel; and
- 3) Serve a duplicate original of the notice of intended disposition and procedure for requesting an administrative hearing by certified mail, return receipt requested.

The duplicate notice must be sent to the registered or documented owner of the vessel, all lien holders who have properly filed a financing statement that references the registered/documented owner, and any operator of the vessel on record with the department or the United States Coast Guard.

Under Haw. Rev. Stat. § 200-49(b) the owner has ten days after the date of the notice to request a hearing in writing in the same manner as that outline under Haw. Rev. Stat. § 200-42. Pursuant to Haw. Rev. Stat. § 200-49(c), if a derelict vessel is not repossessed by the owner or other interested party within twenty days after the public notice was issued the vessel can be disposed of by negotiated sale; however, if two or more purchasers show an interest in the vessel it must be sold at public auction to the highest bidder. If no one is interested in purchasing the derelict vessel it can be destroyed or donated to any governmental agency.

### **Differences between Commercial and Recreational Vessel Treatment**

Hawai'i does not distinguish between commercial or recreational vessels under the states abandoned and derelict vessel provisions.

### **Vessel Size Requirements or Limits**

Hawai'i statutes do not establish any size requirements or limitations with regards to abandoned or derelict vessels.



### **Funding Sources**

The State of Hawai'i does not currently have a dedicated funding source for dealing with abandoned and/or derelict vessels, but it has established a boating special fund under Haw. Rev. Stat. § 248-8 that is funded through the assessment of fuel taxes on small boats. Although this fund was not intended to deal with abandoned or derelict vessels it can be used by the DLNR to cover the costs associated with the impoundment and sale or disposal of these vessels. These costs are currently reimbursed, fully or partially, through the proceeds obtained from the sale of abandoned and derelict vessels (Haw. Rev. Stat. § 200-47). Any proceeds from the sale of these vessels are first used to reimburse the boating special fund or other fund(s) from which the expenses incurred in connection with the vessel were paid, with any money remaining going into the general fund of the State. If the proceeds of the sale are insufficient to cover the expenses incurred by the Department, it may bring an action for the deficiency in a court of appropriate jurisdiction against the registered or documented owner or any person who had an interest in the vessel when custody was taken.

### **Lead State Agency**

The lead agency for abandoned and derelict vessels in Hawai'i is the DLNR under the Board of Land and Natural Resources.

Email: [dlnr@Hawai'i.gov](mailto:dlnr@Hawai'i.gov)

Telephone: 808-587-0400

Website: <http://dlnr.Hawai'i.gov/>

### **Insurance Requirements for Vessels**

Boat insurance is not required as a general rule in Hawai'i unless the vessel is housed in DLNR facilities. Currently, the Department requires all vessels housed in its facilities to be covered by a \$500k insurance policy; however, trailered boats and vessels coming from other locations are not yet required to carry vessel insurance. The State does require all vessels to be registered and numbered under Haw. Rev. Stat. § 200-31.

### **Specific Location Factors, Limitations and Additional Information**

Vessels found aground on state submerged lands, shorelines, or coral reefs must be removed immediately by the owner or operator at their expense (Haw. Rev. Stat. § 200-47.5(a)). Vessels grounded on sand beaches, sandbars, or mudflats that are not in imminent danger of breaking up shall be removed within 72 hours, unless the Department agrees to a different schedule. All damages to state or private property as a result of the grounding becomes the sole responsibility of the vessel's owner or operator. The DLNR can assume control of any vessel, under Haw. Rev. Stat. § 200-47.5(b), that:

- 1) Is grounded on a coral reef or in imminent danger of breaking up; and
- 2) Cannot be immediately removed by the owner within twenty-four hours of actual notification to the vessel owner or the owner's representative by the department and in a manner that is reasonably safe, as determined by the department. If the department has made good faith efforts to provide actual notice to the owner or the owner's representative but such actual notice is futile, the department may assume control of the grounded vessel within twenty-four hours from the time it has been determined actual notice is futile.



This section does not apply if the owner or their representative has already commenced effective salvage operations. After twenty-four hours the owner of the vessel may continue as the primary salvage agent if they can provide proof of a marine insurance policy of at least \$1,000,000 that lists the State as an additional insured. The owner must also provide proof that an active and effective salvage effort has been initiated and evidence that the vessel can be saved/removed within seventy-two hours of grounding. If the Department determines that no additional environmental damage will occur they may extend the 72 hour limit.

If the Department does assume control of the grounded vessel it must be removed by conventional salvage methods that minimize damages to the natural resources and prevent it from becoming a navigation hazard. All costs associated with the vessels removal and damages sustained to state of private property are the sole responsibility of the vessel's owner or operator. If the owner/operator does not pay for the costs associated with the grounding and removal then the State can take legal action against them, with all monies collected being deposited into the boating special fund (Haw. Rev. Stat. § 200-47.5(c)). Any person who assists the Department or, in good faith, renders assistance at the scene of the grounding is not liable for any civil damages unless the damages were caused by gross negligence, wanton acts or omissions (Haw. Rev. Stat. § 200-47.5(d)).

In small boat harbors, pursuant to Haw. Code R. § 13-231-10(a), the DLNR has the authority to impound and remove or dispose of any vessel (and property onboard) left or moored at a small boat harbor or offshore mooring area when the Department determines it is necessary to protect human life and property or if its presence is contrary to law.

Before taking action the Department is required to provide notice, as provided in Haw. Code R. § 13-231-6, for the owner to remove the vessel, which must be done within 72 hours after the notice was given, and to inform them that they are responsible for the cost and risk of any actions taken by the department to remove the vessel. The notice prepared by the Department, required under Haw. Code R. § 13-231-10, must be either posted in a conspicuous place aboard the vessel or at the assigned berth, mailed to the person by certified mail at the person's last known address, or delivered by personal service (Haw. Code R. § 13-231-6). The Department can remove a vessel without providing prior notice in an emergency situation, where life or property is endangered or if a vessel may interfere with other vessels, the construction or maintenance of berthing facilities, or with navigation.

Within 72 hours of the impoundment the Department must send a notice of impoundment by certified mail to the registered owner or operator, who then has ten days after receipt to request a hearing to contest the impoundment from the Administrator, Division of Boating and Ocean Recreation, DLNR (Haw. Code R. § 13-231-10(b)). Pursuant to Haw. Code R. § 13-231-10(c) the custody of an unauthorized and impounded vessel must be returned to the person entitled to possession upon payment of all associated fees and costs due, and any fines levied by a court. If the vessel remains unclaimed by the person entitled to possession, the registered owner or a lien holder for more than 30 days the Department can sell the vessel at public auction in accordance with Haw. Rev. Stat. § 200.

In addition, when any person abandons a vessel upon the premises of a private marina, yacht club or vessel repair business the owner of the business or private marina, their representative, or the designated representative of the yacht club may sell or dispose of the vessel under





pursuant to Haw. Rev. Stat. § 200-51. Vessels are deemed abandoned under Haw. Rev. Stat. § 200-52 upon satisfaction of all the following conditions:

- 1) the service requested or required by a person whose vessel is navigated, towed, or brought to the repair business, private marina, or yacht club, such as mooring, storage, towing, and rendering estimates of the cost of repairs, has been performed;
- 2) no authorization is given to perform any further service or to allow mooring or storage, but the vessel is left on the repair business, private marina, or yacht club premises;
- 3) the owner of the repair business or private marina, or the owner's authorized representative, or the designated representative of the yacht club, has given notice by registered or certified mail, to the registered owner of the vessel at the address on record at the vessel repair business, private marina, or yacht club, and the address on record at the Department or U.S. Coast Guard, and to any person with a recorded interest in the vessel;
- 4) and the vessel is not repossessed within the thirty-day period provided by the notice.

The notice must provide a description of the vessel and its location and state that, if the vessel is not repossessed within 30 days after the mailing of the notice, it will be sold or disposed of. A notice does not need to be sent to any unrecorded interested parties if their name or address cannot be determined. Any notices sent are deemed received by the legal or registered owner five calendar days after the mailing, absent any evidence to the contrary.

When a vessel has been designated as abandoned under Haw. Rev. Stat. § 200-52 at a vessel repair business, private marina or yacht club, the owner or their authorized representative must post one public advertisement in a newspaper of general circulation and allow for a period of 5 days after the notice before selling or disposing of the vessel (Haw. Rev. Stat. § 200-53). The entity who sold or disposed of the vessel is required to file an affidavit with the Department stating to whom the vessel was sold or, if the vessel was not sold, the manner in which the vessel was disposed.

Pursuant to Haw. Rev. Stat. § 200-54, the authorized seller of the vessel is entitled to compensation from the proceeds to cover the costs of the services rendered in connection with the vessel, including the reasonable and customary charges for towing, handling, storage, and any required notices and advertising. The remaining proceeds from the sale must be distributed, in order of priority, to any lien holders (to satisfy any outstanding liens) and then to the registered owner, if known. If the registered owner cannot be found, the remaining balance will be held by the State and paid out to the registered owner if a proper claim is filed within one year from the execution of the sale agreement; if no claim is made within the year allowed, the money shall become property of the state.

### **Prioritization Scheme**

The State of Hawai'i does not have a prioritization scheme for removing and disposing of abandoned and derelict vessels on state waters; however, vessels found aground on state submerged lands, shorelines, or coral reefs must be removed immediately by the owner or operator at their expense (Haw. Rev. Stat. § 200-47.5(a)).



## Hawai'i ADV Legislative and Administrative Review 2015

### **Legislation and Administrative Codes**

The laws and administrative codes referenced in this document can be accessed from:

Hawai'i Revised Statutes (2014):

<http://www.capitol.Hawaii.gov/docs/HRS.htm>

Hawai'i Administrative Rules (2014):

<http://ltgov.Hawaii.gov/the-office/administrative-rules/>

These Legislative and Administrative Reviews are intended for informational purposes only. They are summaries and not meant to be legal references, and should not be used as such. See the official state statutes and administrative codes for current state laws and rules and regulations for any legal references.