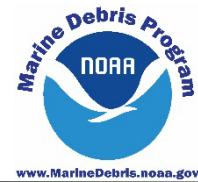


State of Washington



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

NOAA Marine Debris Region:
Pacific Northwest



Definition of a Vessel

The State of Washington defines a “vessel” under Wash. Rev. Code § 79.100.010(8) in the following manner:

Vessel: means every species of watercraft or other mobile artificial contrivance, powered or unpowered, intended to be used for transporting people or goods on water or for floating marine construction or repair and which does not exceed two hundred feet in length. “Vessel” includes any trailer used for the transportation of watercraft, or any attached floats or debris.

Washington code also provides a definition for a “ship” under the derelict vessel chapter (Wash. Rev. Code § 79.100.010(7)):

Ship: means every species of watercraft or other mobile artificial contrivance, powered or unpowered, intended to be used for transporting people or goods on water or for floating marine construction or repair and that exceeds two hundred feet in length

Definition of an Abandoned and/or Derelict Vessel

Washington law distinguishes between abandoned and derelict vessels and provides a definition for both under the Derelict Vessel chapter of Washington Revised Code Title 79 for Public Lands. “Abandoned vessel” is defined under Wash. Rev. Code § 79.100.010(1) as follows:

Abandoned Vessel: means a vessel that has been left, moored, or anchored in the same area without the express consent, or contrary to the rules of, the owner, manager, or lessee of the aquatic lands below or on which the vessel is located for either a period of more than thirty consecutive days or for more than a total of ninety days in any three hundred sixty-five-day period, and the vessel's owner is:

- a) not known or cannot be located; or
- b) known and located but is unwilling to take control of the vessel.

For the purposes of this definition, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

The State also provides the following definition for “derelict vessel” under Wash. Rev. Code § 79.100.010(5):

Derelict Vessel: means the vessel's owner is known and can be located, and exerts control of a vessel that:

- a) Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to RCW 79.02.300 or rules adopted by an authorized public entity;
- b) Has been left on private property without authorization of the owner; or
- c) Has been left for a period of seven consecutive days, and:
 - i. Is sunk or in danger of sinking;



- ii. Is obstructing a waterway; or
- iii. Is endangering life or property.

Formal State Program for Abandoned Vessels

Washington State does have a formal derelict vessel program that is administered by the Department of Natural Resources that provides funding and expertise to help public agencies remove and dispose of abandoned boats. It is funded through the Derelict Vessel Removal Account, which was established under Wash. Rev. Code § 79.100.100. The derelict vessel program is supported by a comprehensive set of state statutes and administrative codes that provide for the designation, removal and disposal of abandoned and derelict vessels, found on or above public aquatic lands, by authorized public entities.

Under Wash. Rev. Code § 79.100.110, it is unlawful and a criminal misdemeanor to cause a vessel to become derelict or abandoned in Washington, which can result in a fine of up to \$1,000 and 90 days in jail (see Wash. Rev. Code § 7.80.120 for penalties). In addition, any person who intentionally, through action or inaction and without the appropriate authorization, causes a vessel to sink, break up, or block navigation upon aquatic lands is also guilty of a misdemeanor. Owners who abandon vessels, in addition to receiving a misdemeanor, are responsible for all costs associated with removal and disposal.

The State of Washington has also established a Voluntary Vessel Turn-in Program under Wash. Rev. Code § 79.700.160. The purpose of the vessel turn-in program is to allow the state to dismantle and dispose of vessels that pose a high risk of becoming a derelict vessel or abandoned vessel. The Department of Natural Resources will accept and review vessel turn-in program applications from eligible vessel owners, including private marinas that have gained legal title to a vessel in an advanced state of disrepair, to determine if they meet the criteria established under Wash. Rev. Code § 79.700.160. Accepted vessels will be dismantled and disposed of by the department from funds allocated to the vessel turn in program (not more than \$200,000 per biennium).

Designation of Abandoned and/or Derelict Vessels

In Washington if a vessel meets the above definition(s) for abandoned and/or derelict vessels then the Department of Natural Resources, or another authorized public entity with jurisdiction, can designate the vessel as either an abandoned or derelict vessel under Wash. Rev. Code § 79.100.

Responsibility for Removal of Abandoned or Derelict Vessels

In the State of Washington authorized public entities have the authority to store, strip, use, auction, sell, salvage, scrape, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the public entities jurisdiction (Wash. Rev. Code § 79.100.030(1)). However, under Washington statutes the primary responsibility to remove a derelict or abandoned vessel belongs with the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is located (Wash. Rev. Code § 79.100.030(2)). "Aquatic lands" being all public and private tidelands, shorelands, harbor areas, and the beds of navigable waters (Wash. Rev. Code § 79.100.010(2)).

Authorized public entities include the Department of Natural Resources; the Department of Fish and Wildlife; the Parks and Recreation Commission; a metropolitan park district; a port district; and any city, town, or county with jurisdiction over the aquatic lands. (Wash. Rev. Code



§ 79.100.010(3)). If the authorized public entity is unwilling or unable to exercise their authority over an abandoned or derelict vessel they can request the Department of Natural Resources to assume authority (Wash. Rev. Code § 79.100.030(2)). Public entities with jurisdiction over a vessel may also enter into contracts with private companies and individuals to carry out their authority (Wash. Rev. Code § 79.100.070).

The authority granted under Wash. Rev. Code § 79.100.030 is permissive and no liability can be attached to authorized public entities that choose not to assume authority. Authorized public entities that do take proper legal action under this chapter are not liable for civil damages resulting from their actions, unless gross negligence or willful or wanton misconduct occurs; which also applies to any person who assists under a request from the authorized entity (Wash. Rev. Code § 79.100.030(3)).

Removal and Disposal Requirements/Guidelines

Pursuant to Wash. Rev. Code § 79.100.040(1), before an authorized public entity may take the actions authorized under Wash. Rev. Code § 79.100.030 it must obtain custody of the vessel. In order to take custody the authorized public entity must mail a notice of its intent to obtain custody, at least 20 days prior to taking custody, to the last known address of the previous registered owner and to any lien holders or secured interests on record. The notice must also be posted on the vessel for 30 days and published at least once in a newspaper of general circulation within the county, between 10 and 20 days prior to taking custody. In addition, the notice of intent must be posted on the Department of Natural Resources internet web site page specifically designated for such notices.

Any notices sent, posted, or published in accordance with Wash. Rev. Code § 79.100.040 must, at a minimum:

- explain the intent of the authorized public entity to take custody of the vessel;
- the rights of the authorized public entity after taking custody of the vessel;
- the procedures the owner must follow in order to avoid custody being taken by the authorized public entity;
- the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and;
- the financial liabilities that the owner may incur as provided for under Wash. Rev. Code § 79.100.060.

Under Wash. Rev. Code § 79.100.040(3) any authorized public entities may tow, beach, or otherwise take temporary possession of an abandoned or derelict vessel that is in immediate danger of sinking, breaking up, or blocking navigational channels or poses a reasonably imminent threat to human health, safety or the environment; providing that the owner cannot be located or is unwilling or unable to take immediate responsibility for the vessel. Before taking temporary possession of the vessel, the authorized public entity is required to make reasonable attempts to consult with the Department of Natural Resources or the U.S. Coast Guard to ensure that other remedies are not available. If a vessel is taken under Wash. Rev. Code § 79.100.040(3) a written notice that states the basis for taking temporary possession of the vessel must be submitted to the owner, if known, within 7 days of taking action (or as soon as is reasonable). If a vessel is taken in to custody under Wash. Rev. Code § 79.100.040, and the authorized public entity has not already provided the required notice they must initiate the



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notice provisions, as outlined in Wash. Rev. Code § 79.100.040(1), immediately after taking possession of the vessel and complete them before using or disposing of the vessel pursuant to Wash. Rev. Code § 79.100.050.

Vessels owner may contest an authorized public entity's decision to take temporary possession or custody of a vessel or contest the amount of reimbursement owed by requesting a hearing with the appropriate entity, while a transferor or other entity with secondary liability may commence a lawsuit in superior court to contest their liability (Wash. Rev. Code § 79.100.120(1)).

After taking custody of a vessel, the authorized public entity may use or dispose of the vessel in any appropriate and environmentally sound manner without further notice to any owners; however, they must give preference to uses that derive a monetary benefit from the vessel, either in whole or in scrap (Wash. Rev. Code § 79.100.050). If the vessel has no value the authorized public entity must give preference to the least costly, environmentally sound and reasonable disposal option.

Pursuant to Wash. Rev. Code § 79.100.030(1), a vessel disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions under Wash. Rev. Code § 70.95. A vessel can be sunk or scuttled, after obtaining all necessary state and federal permits or licenses, with the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur. If the authorized public entity chooses to offer the vessel at a public auction, a minimum bid and/or a letter of credit may be required to discourage future re-abandonment of the vessel (Wash. Rev. Code § 79.100.030(2)).

Proceeds derived from the sale of the vessel must first be applied to any administrative costs (associated with notification requirements), removal and disposal costs, and to cover environmental damages directly or indirectly caused by the vessel (Wash. Rev. Code § 79.100.050(3)). Any remaining proceeds must be applied, first, to satisfying any liens registered against the vessel and then to the derelict vessel removal account established under Wash. Rev. Code § 79.100.100.

The owner of an abandoned or derelict vessel, or any person/entity with secondary liability, is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the vessel (Wash. Rev. Code § 79.100.060(1)). If a vessel is taken into temporary custody by an authorized public entity they may require the owner to pay all reasonable and auditable costs before the vessel is released back into their custody. Reimbursement for costs may also be sought from an owner who is identified subsequent to the vessel's removal and disposal (Wash. Rev. Code § 79.100.060(2)).

If the total costs due to the authorized public entity are not paid within 30 days after the responsible party has been notified of the costs, the Department of Natural Resources may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees incurred by the authorized public entity (Wash. Rev. Code § 79.100.060(3)).

Differences between Commercial and Recreational Vessel Treatment

Washington does not distinguish between commercial and recreational vessels under the abandoned and derelict vessel provisions in



Vessel Size Requirements or Limits

For the purposes of the derelict vessel chapter provisions under Washington statutes a “vessel” is defined as being under 200 feet in length; whereas a “ship” is defined as being over 200 feet in length and are not covered directly under the derelict vessel laws (Wash. Rev. Code § 79.100.010). In practice, funding often limits the removal of vessels longer than 100 feet; however, this depends on the current budget cycle and one-time legislative appropriations that sometimes occur for large vessel removals (notes from Melissa Ferris, Program Manager, Washington State Derelict Vessel Removal Program, 9/04/2014).

Funding Sources

Washington’s Derelict Vessel Removal Program receives funds to remove vessels and for administrative costs from the Derelict Vessel Removal Account, established under Wash. Rev. Code § 79.100.100; which receives monies from a variety of sources including annual vessel registration fees (\$3) and from non-resident vessel permit fees (\$5), as defined under Wash. Rev. Code § 88.02.640. The Derelict Vessel Removal Account, which is housed within the state treasury, also receives money from the sale/disposal of abandoned and derelict vessels pursuant to Wash. Rev. Code § 79.100.050, and from cost reimbursements associated with vessel removal and disposal (Wash. Rev. Code § 79.100.060).

The account is also authorized to receive fund transfers and appropriations from the general fund, deposits from the Derelict Vessel Removal Fee (Wash. Rev. Code § 79.100.180), as well as gifts, grants, and endowments from public or private sources. The Derelict Vessel Removal Fee is an annual fee, assessed at one dollar per foot of vessel length, that is imposed on all persons required under Wash. Rev. Code §84.40.065 to list any ship or vessel for state tax purposes (Wash. Rev. Code § 79.100.180).

Expenditures from the Derelict Vessel Removal Account may only be used by the department for developing and administering the vessel turn-in program (Wash. Rev. Code § 79.100.160) and to reimburse authorized public entities for up to ninety percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of abandoned or derelict vessels, when the vessel owner cannot be identified with reasonable efforts or is insolvent. Any funds in the account transferred from the general fund or funds deposited from the watercraft excise tax (Wash. Rev. Code § 82.49.030) must be used to reimburse one hundred percent of costs and should be prioritized for the removal of large vessels. Costs associated with the removal and disposal of an abandoned or derelict vessel under the authority of Wash. Rev. Code § 53.08.320 also qualify for reimbursement from the derelict vessel removal account.

Lead State Agency

The lead agency for abandoned and derelict vessels in Washington is the Department of Natural Resources, through the Derelict Vessel Removal Program.

Email: dvrp@dnr.wa.gov

Telephone: 360-902-1574

Website: <http://www.dnr.wa.gov/programs-and-services/aquatics/recovering-derelict-vessels>



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For more information on Washington's derelict vessel program you can download the Derelict Vessel Removal Program Guidelines (March 2015) at http://www.dnr.wa.gov/publications/agr_dv_guidelines_0715.docx.

Insurance Requirements for Vessels

Washington does not currently require boaters to carry insurance on their vessels, but they do require marine inspections prior to the sale of used vessels more than 65 feet in length and more than 40 years old.

Pursuant to Wash. Rev. Code § 79.100.150, any seller of a vessel more than 65 feet in length and more than 40 years old must provide the buyers with a vessel inspection, contained in a formal marine survey, and see proof of marine insurance coverage for the vessel from the buyer before transferring the title. If the vessel inspection determines that the vessel is not seaworthy and the costs required to get the vessel seaworthy are more than the value of the vessel, the owner is not allowed to sell or transfer the vessel.

Any individual or company that purchases or otherwise receives a used vessel greater than sixty-five feet in length and more than forty years old secure a marine insurance policy prior to taking ownership (Wash. Rev. Code § 79.100.170). The insurance coverage must be of an amount that is at least three hundred thousand dollars, unless otherwise provided by the department by rule, for a term of at least 12 months; which includes coverage for the removal of the vessel if it should sink and coverage should it cause a pollution event. If the new owner lets the insurance coverage lapse or cancels it before the 12 month period is over they can be charged with a misdemeanor.

Specific Location Factors, Limitations and Additional Information

Private Property

Local government agencies (cities and counties) have regulatory jurisdiction over private land and have the authority to take the lead on vessel removals from privately-owned land. However, private landowners wishing to removal abandoned or derelict vessels from their land would have to file an action in trespass or proceed under the state's abandoned property laws. According to Wash. Admin. Code. 308-93-275(2), a vessel abandoned on land may be disposed of by one of the following provision:

- The lost and found property laws under Wash. Rev. Code § 63.21;
- The unclaimed property in hands of city police under Wash. Rev. Code § 63.32;
- Unclaimed property in the hands of Washington state patrol pursuant to Wash. Rev. Code § 63.35); or
- Unclaimed property in hands of sheriff under Wash. Rev. Code § 63.40.

Marinas

A marina owner may contract with a local government for the purpose of participating in the derelict vessel removal program (Wash. Rev. Code § 79.100.130). The local government serves as the authorized public entity for the removal of the derelict vessel from the marina owner's property. The contract must provide for the marina owner to be financially responsible for the removal costs that are not reimbursed by the derelict vessel removal fund and any additional reasonable administrative costs incurred by the local government during the removal of the abandoned or derelict vessel. Prior to the commencement of any vessel removal, which will seek reimbursement from the derelict vessel removal program, the contract and the proposed



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vessel removal must first be submitted for review and approval by the Department of Natural Resources.

Moorage Facilities

Under Wash. Rev. Code § 53.08.320, a moorage facility operator may adopt all rules necessary for rental and use of moorage facilities, and establish procedures for the enforcement of these rules, for the expeditious collection of port charges. Moorage facilities can take possession and control of a vessel if the owner, after being notified of the charges by registered mail, fails to pay the port charges owed or to commence legal proceedings (Wash. Rev. Code § 53.08.320(1)), or if the vessel is in danger of sinking or causing other damage (Wash. Rev. Code § 53.08.320(2)).

If a vessel is secured pursuant to Wash. Rev. Code § 53.08.320, and the notification requirements under Wash. Rev. Code § 53.08.320(1) have been met, then the moorage facility can presume the vessel to be abandoned if it has not been released to the owner, under the bonding provisions of this chapter, within 90 days (Wash. Rev. Code § 53.08.320(4)). Vessels presumed to be abandoned can be sold by the moorage facility at a public sale to the highest or best bidder Wash. Rev. Code § 53.08.320(5); providing the owner is given at least 20 days' notice of the sale (as outlined under this section). Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in superior court to contest the validity of the impoundment or the amount of the port charges owing. The proceeds of a sale under this section shall first be applied to the payment of port charges; with any remaining balance being paid to the owner or into the derelict vessel removal fund, if the owner is not known. If no one purchases the vessel or it is not removed within 10 days of the sale the title reverts to the moorage facility operator.

Private mooring facilities have similar removal authority under Wash. Rev. Code § 88.26.020; however, they are not eligible to receive reimbursement out of the derelict vessel removal account under that statute.

Vessels Adrift

Washington also allows for the taking of vessels found adrift. Any person taking up any vessel found adrift and out of the custody of the owner in waters of this state is to notify the owner, if known or ascertainable upon reasonable inquiry, and request that the owner pay all reasonable charges and take such vessel away (Wash. Rev. Code § 79A.60.230). Such written notice shall inform the party where the vessel was taken up, where it may be found, and what amount the taker-up or finder demands for his or her charges (see Wash. Rev. Code § 79A.60.240 - § 79A.60.260). Every person taking up any vessel so found adrift, and giving the notice required, is entitled to receive from the owner claiming the property, a reasonable compensation for his or her time, services, expenses, and risk in taking up said property. If the person has not substantially complied with the notice provisions within 10 days of the taking up, they will not be entitled to compensation and may be liable for any damages caused during the taking.

Prioritization Scheme

The Washington Legislature requires the Department of Natural Resources to prioritize the use of funds from the Derelict Vessel Removal Account for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels or that present environmental risks such as leaking fuel or other hazardous substances (Wash. Rev. Code § 79.100.100(2)).



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The Department of Natural Resources keeps an inventory of “vessels of concern” that are ranked by funding priority based on the following criteria (lowest number = highest priority):

- Priority 1: Emergencies
- Priority 2: Non-emergency existing threats to human health, safety and environment
- Priority 3: Vessels impacting habitat and not already covered in Priority 1 or 2.
- Priority 4: Minor navigation or economic impact
- Priority 5: Other abandoned or derelict vessels

The severity of potential threats to human health & safety and the environment are evaluated based on many factors, including but not limited to:

- Condition of the vessel
- Condition of its anchoring or mooring system
- Size of the vessel
- Proximity to navigation channels
- Anticipated weather conditions
- General potential for harmful encounters with people or property
- The toxicity or hazard potential of the hazardous substance(s) on board the vessel
- Location of the vessel, particularly its proximity to potentially sensitive areas or populations
- Potential as an attractive nuisance
- Owner’s involvement with vessel, including factors such as proper registration, actions actually taken or not taken, and owner’s ability to take care of the vessel or lack thereof.

For more information on the Washington’s prioritization scheme and their Derelict Vessel Inventory see <http://www.dnr.wa.gov/programs-and-services/aquatics/derelict-vessels/derelict-vessel-inventory-and-funding>.

Legislation and Administrative Codes

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

Revised Code of Washington (2015):

<http://apps.leg.wa.gov/rcw/>

Washington Administrative Code (2015):

<http://apps.leg.wa.gov/wac/>

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.