

Public Testimony Regarding House Bill 31: "An Act Relating to the Registration of Commercial Vessels and the Derelict Vessel Prevention Program Fund"

Dear Honorable Members of the Alaska Legislature,

I am writing to provide public testimony on House Bill 31, which proposes amendments to the registration of commercial vessels and the management of derelict vessels in the state. While this bill aims to address certain issues, I believe it fails to provide a comprehensive solution and overlooks critical challenges faced by all vessel owners, particularly smaller fishing vessels and communities that rely on the fishing industry.

1. HB 31's Attempts to Remedy Issues

HB 31 introduces exemptions to the registration of certain types of vessels, including commercial vessels that hold valid documentation under federal laws. While these provisions may streamline the process for some commercial operators, they fail to address the broader challenges of vessel tracking, registration, and derelict vessel management in the state:

Exemptions to Registration:

The bill exempts certain commercial vessels with federally recognized documentation from state registration requirements. While the intent may be to avoid redundant regulation, these exemptions create gaps in state oversight, especially where state and federal systems may not fully align. Moreover, this does not address non-commercial vessels or small fishing boats that might be more vulnerable to deregistration and dereliction without proper oversight.

Sale of Derelict Vessels and Fund Distribution:

The bill changes the process for distributing proceeds from the sale of derelict vessels, shifting funds from the derelict vessel prevention program fund into the general fund. While

this may simplify fund management, it eliminates a dedicated resource for managing derelict vessels, which are an increasing concern in many Alaska communities.

2. Issues HB 31 Fails to Address

While the bill may solve a few narrow issues, it fails to comprehensively address the growing problem of derelict vessels and small vessel registration challenges:

Limited Focus on Commercial Vessels:

HB 31 primarily targets commercial vessels and exempts some from state registration. However, the bill does not address non-commercial vessels, which are also significant contributors to the problem of derelict vessels and are often overlooked in regulatory frameworks. This is especially problematic for smaller fish boats, which may not fall under the commercial vessel category but still operate in Alaska's waters and contribute to marine debris and environmental risks.

Derelict Vessel Prevention:

The elimination of the derelict vessel prevention fund creates a funding gap that could lead to fewer resources dedicated to addressing the rising problem of abandoned vessels. This fund was previously crucial for removing and disposing of vessels that pose significant environmental and navigational risks. Without this dedicated fund, the responsibility will likely fall on local governments or private entities, which may not have the resources to manage this growing problem.

3. Legal and Constitutional Issues with HB 31

HB 31 presents several legal and constitutional challenges:

Overreach in Exemptions:

By exempting certain vessels from registration, the bill creates a potential conflict between state and federal jurisdiction. Federal vessels and vessels with U.S. Coast Guard documentation are already subject to extensive oversight, but exempting these from state registration may create gaps in enforcement and oversight, leading to jurisdictional challenges.

Inconsistent Fund Allocation:

The repeal of the derelict vessel prevention fund raises legal concerns over the use of these funds. Diverting the balance of this fund to the general fund may be viewed as a misallocation of resources, especially since the original fund was established specifically to address the growing problem of derelict vessels. This shift could also be challenged by stakeholders who rely on these funds to deal with environmental hazards posed by abandoned vessels.

HB 31 presents several legal and constitutional challenges:

Interstate Commerce Clause:

The exemption for vessels with documentation from other states or foreign governments may run afoul of the Interstate Commerce Clause of the U.S. Constitution, which prohibits states from enacting laws that unduly burden interstate or foreign commerce. If Alaska were to allow certain vessels, particularly those from other states or countries, to bypass registration, it could be seen as an unconstitutional discriminatory practice that unfairly benefits in-state vessels over interstate or foreign vessels. This could potentially lead to legal challenges from other states or countries, especially if it hinders their vessels' ability to operate within Alaska's waters.

Equal Protection Clause:

By providing exemptions to certain categories of vessels (e.g., those with U.S. Coast Guard documentation, foreign boats, and certain non-motorized vessels), the bill may raise concerns under the Equal Protection Clause of the 14th Amendment. If these exemptions treat different vessels differently without a rational basis, it could be argued that the law is discriminatory and violates the principle of equal protection under the law.

State vs. Federal Authority:

HB 31's exemptions for vessels that already have valid federal documentation (e.g., U.S. Coast Guard certificates) could create jurisdictional conflicts between federal and state

laws. Specifically, while the U.S. Coast Guard has oversight of certain commercial vessels, exempting them from state registration could leave a gap in regulatory enforcement at the state level. Alaska could face legal challenges in cases where it is not clear whether federal law or state law takes precedence in regulating these vessels, especially in the context of derelict vessel prevention and environmental protections.

Inconsistent Fund Allocation:

The repeal of the derelict vessel prevention program fund and its funds being deposited into the general fund may violate specific state constitutional protections related to dedicated funds. Alaska may have constitutional provisions that mandate certain funds be used for specific purposes (such as environmental protection or public safety), and diverting this fund into the general fund could be viewed as misappropriation of resources. If the fund was legally established for a particular purpose (i.e., dealing with derelict vessels), shifting that balance to the general fund might face constitutional scrutiny if challenged in court.

Vessel Identification Issues:

With exemptions for certain commercial vessels, there could be a legal loophole in enforcement where state agencies are unable to track these vessels properly. If the state lacks a robust database or system to ensure compliance with the federal registration system, there could be challenges in holding vessels accountable for violating state laws, particularly in cases of dereliction. The lack of uniform vessel identification could violate principles of due process if authorities are unable to adequately regulate or impose penalties on non-compliant vessels.

Conflict of Interest in Fund Allocation:

Under Section 2, the proceeds from the sale of a derelict vessel are distributed in a specific order that includes administrative costs. However, if the fund no longer exists or is moved into the general fund, the intent of this fund could be undermined. If there is insufficient oversight of the allocation process, the proceeds from the sale of derelict vessels could be used for purposes outside their intended scope, leading to legal challenges over improper use of the funds.

Lienholder Issues:

The bill may need clarification on how lienholders are prioritized in the sale of vessels, particularly if the vessel is subject to conflicting claims under both state and federal laws. A legal loophole may arise in cases where lienholders' rights under state law are unclear or

in conflict with federal regulations governing commercial vessels. This could cause disputes about the proper allocation of proceeds from vessel sales.

4. Overlapping Laws and Regulatory Gaps

HB 31 intersects with several existing federal and state laws, which could create regulatory overlaps or gaps in enforcement:

Commercial vs. Non-Commercial Vessels:

By focusing primarily on commercial vessels, the bill creates a discrepancy between the way commercial and non-commercial vessels are treated. This is problematic because smaller fish boats and recreational vessels often operate in the same waters and pose similar environmental risks. A unified approach that addresses both commercial and non-commercial vessels would ensure more effective oversight and tracking.

Vessel Tracking and Compliance:

The lack of a comprehensive vessel tracking system means that enforcement agencies may struggle to ensure compliance across the board. Vessels that are exempted under HB 31, such as those with federal documentation or those registered in other states, may not be subject to the same level of scrutiny, creating potential tracking gaps that could exacerbate derelict vessel problems.

5. A Better Solution for All Stakeholders

To address the challenges posed by HB 31 and better serve the needs of the state, I propose the following solutions:

Unified Vessel Registration for All Vessels:

Instead of exempting certain commercial vessels from state registration, the state should implement a standardized registration process that applies to all vessels operating in Alaska's waters, both commercial and non-commercial. This would help streamline the registration system and ensure that every vessel is properly tracked, reducing the potential for gaps in oversight, particularly for smaller fishing boats that are often neglected under the current system.

Dedicated Derelict Vessel Fund:

The state must reinstate and expand the derelict vessel prevention fund to ensure that there are sufficient resources for the removal and disposal of derelict vessels. These funds should be exclusively allocated for this purpose to protect the environment, reduce navigational hazards, and alleviate the financial burden on local communities.

Improved Vessel Tracking and Reporting:

Alaska should adopt a comprehensive, unified vessel tracking system that integrates with federal databases. This system would include real-time tracking for all vessels, vessel ownership details, maintenance history, and derelict vessel reports. By utilizing digital platforms to monitor vessel activity, the state could ensure more effective enforcement and streamline the management of derelict vessels.

Collaboration with Federal Agencies:

To avoid jurisdictional conflicts and regulatory overlaps, the state should work in partnership with federal agencies, such as the U.S. Coast Guard, to create a more coordinated system for vessel registration and derelict vessel prevention. This collaboration would ensure that federal and state regulations are aligned and that there is a clear, effective process for vessel tracking and removal. If they still exist.

6. The Impact on Smaller Fishing Boats

Smaller fishing boats, which are the backbone of Alaska's fishing communities, could be disproportionately affected by the current version of HB 31. These vessels often operate on tight budgets and are more vulnerable to dereliction due to the lack of sufficient registration oversight. Additionally, without a dedicated fund for derelict vessel removal, smaller vessel owners could face increased costs related to vessel disposal and environmental cleanup.

Moreover, the lack of a standardized registration system for all vessels means that smaller boat owners may not receive the same level of support and resources as larger commercial vessels. This discrepancy could place additional burdens on these local, small-scale operators, who already face unique challenges in Alaska's demanding environment.

7. Conclusion

In conclusion, while HB 31 attempts to address specific issues related to commercial vessel registration and derelict vessel management, it fails to provide a comprehensive solution for the state's vessel management system. The bill overlooks important concerns regarding small fishing vessels, derelict vessel prevention, and fund allocation. A more effective solution would involve a unified registration system, a dedicated derelict vessel fund, and stronger collaboration with federal agencies to ensure comprehensive oversight of all vessels operating in Alaska's waters.

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Thank you for your time and consideration of these critical issues and forcing me to expand my own horizons in order to help protect the Alaskan people. There are improvements that could be made to this existing bill.

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Two Rivers

Myself