

02/14/13

Overview:

Derelict

Vessels on

State

Lands

<TARGET><BILL></BILL><SUBJECT>02-14-13 Overview Derelict
Vessels on State Lands</SUBJECT><COMM>HFSH28</COMM></TARGET>

Derelict Vessels

On State Lands





Where do we find them

- State Submerged Lands
- State Tidelands
- State Shorelands (inland freshwater)
- On General State Lands
- In Critical Habitat Areas
- In Parks





Manifested in various forms

- Shipwrecks
- Abandoned vessels
- Derelict vessels
- Old floathomes
- Private vessels
- Work vessels
- Ships to dinghies



DNR Authorities

- Anchoring for less than 14 days is generally allowed – 11 AAC 96.020
- Longer than 14 days anchorage in one location requires an approval through some authorization from DMLW
- Lack of enforcement authority to fine an individual that doesn't follow the law *no ability to fine*
- No direct authority under the land law to seize or take control of a derelict vessel *DOT delegated*
- DMLW permits activities to clean up shipwrecks and vessels

DOT/PF Authorities

- AS 30.30 addresses both Abandoned and Derelict Vessels
- For DNR/DMLW to use this authority, the authority has to be delegated to DNR from DOT/PF

must get authorization passed over to

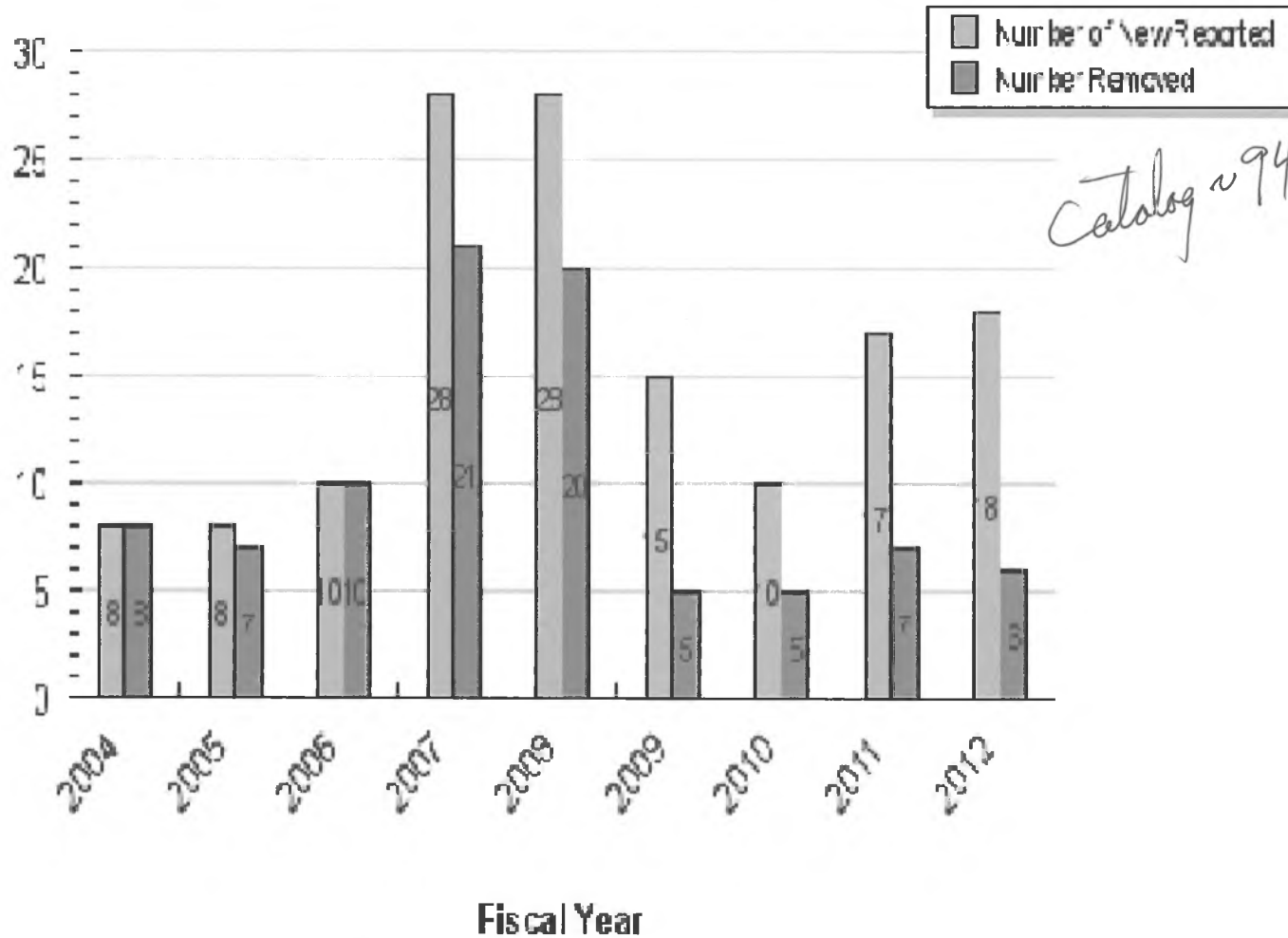


*No disincentives
fine etc*

Large Issue in State

- Many abandoned and derelict vessels
- Sometimes vessels are scuttled without DMLW permit – sometimes to later wash ashore
- Cheaper to leave it on state land than remove and dispose of vessels – owners don't always have money to remove even if identified
- Contaminates can adversely affect environment
- Impacts navigation
- Expensive for the state to remove

Shipwrecks and Abandoned Vessels Removed





1/2 mile Creek



What does it cost

- Just removed two vessels from Jakolof Bay
 - \$250,000 to raise, remove hydrocarbons, stabilize, tow to Homer and have vessels placed in dry storage.
 - Does not include disposal if not auctioned off
- Seattle report of 140 foot vessel that sank last May cost state and federal government \$5.4 million to clean and dispose of vessel. Another recent sinking will cost over \$1 million to clean
- Washington has a derelict vessel removal account funded by a \$3 boat registration fee

Derelict Vessels and Shipwrecks on DNR managed lands

Most recently DNR took responsibility for, and possession of two derelict vessels that sunk in Jakolof Bay near Homer. These two vessels had been denied access to local harbors due to the poor condition of the vessels. The owner anchored both of them in Jakolof Bay in September or October of 2012 where eventually due to the condition of the vessels and snow load they sank in approximately 60 feet of water.



These vessels were eventually refloated in a joint effort by the US Coast Guard, ADEC and ADNR and transported to Homer in mid January. The cost to all agencies was approximately \$250,000 to raise, remove the hydrocarbons, stabilize, tow back to Homer, and have the vessels placed in dry storage. On board these boats was a small amount of hydrocarbons (fuel and oil) as well as propane tanks, flares, fire extinguishers, deep cycle batteries and equipment such as a welder and generator.

DNR had to receive authority from DOT/PF in order to take control of the derelict vessels under AS 30.30.090 and further dispose of the vessels under AS 30.30.100



DNR responds to approximately 15 shipwrecks per year. Unfortunately most marine vessels do not sink in easily accessible locations in shallow water. The vast majorities sink in deep water and are difficult if not impossible to locate or drift ashore and are eventually pushed into the beach or coastline leading to much more difficult, dangerous and expensive responses/removals.





In some cases vessels or barges are left, abandoned on state owned shore lands along rivers or lakes. The following examples are located near Bethel.





Alaska Association of Harbormasters and Port Administrators



RESOLUTION NO. 2012-02

A RESOLUTION OF THE ALASKA ASSOCIATION OF HARBORMASTERS AND PORT ADMINISTRATORS REQUESTING STRONGER MUNICIPAL POWERS IN REGARDS TO ABANDONED AND DERELICT VESSELS.

Whereas, the Alaska Association of Harbormasters and Port Administrators recognizes the majority of the public boat harbors in Alaska where constructed by the State during the 1960s and 1970s; and

Whereas, the State established statutes and regulations for its purposes that dealt with abandoned and derelict vessels at these state harbor facilities; and

Whereas, the specific State statute is called the Abandoned and Derelict Vessel Act (AS 30.30); and

Whereas, the State of Alaska during the past 20 years has transferred ownership of most of these State owned harbors to local municipalities; and

Whereas, the municipalities took over this important responsibility because these harbor facilities represent critical transportation links and are the transportation hubs for waterfront commerce and economic development in Alaskan coastal communities; and

Whereas, these municipal owned harbor facilities are ports of refuge and areas for protection for ocean-going vessels and fishermen throughout the State of Alaska, especially in coastal Alaskan communities; and

Whereas, consequently, local municipal harbormasters found themselves without sufficient legal protection due to some abandoned and derelict vessels left in these harbor facilities; and

Whereas, the cost of cleanup or disposal of an abandoned and derelict vessel can easily exceed \$1 million, creating a major financial burden that their local municipal governments could not afford; and

Whereas, local municipal governments, where they had the legal and financial resources, created codes to protect themselves from the liabilities and hazards of abandoned and derelict vessels; and

Whereas, some local municipal governments do not have the legal and financial resources to create or change codes to protect themselves from the liabilities and hazards of abandoned and derelict vessels; and

Whereas, the unincorporated areas of the State also need protection from the liabilities and hazards due to abandoned and derelict vessels; and

Whereas, the Department of Transportation and Public Facilities' mission is to build, maintain and promote transportation of all modes; and

Whereas, the Department of Transportation & Public Facilities is not funded to perform environmental cleanup work of marine vessels; and

Whereas, other state agencies or peace officers might find it in the public's best interest to impound an abandoned or derelict vessel, especially in the unincorporated areas of the State, to prevent or cleanup the environmental mess left behind from an abandoned or derelict vessel; and

Now therefore be it resolved that the Membership of the Alaska Association of Harbormasters and Port Administrators urges that AS 30.30 be modified as detailed in the attached draft to allow any municipality or state agency to have the full protections afforded in the Abandoned and Derelict Vessel Act.

Passed and approved by a duly constituted quorum of the Alaska Association of Harbormasters and Port Administrators on this 24th day of October, 2012.

Steven R. Corporon, President

ATTEST:

Kim Elliot, Executive Secretary

Please create a work-draft of in modifications below. In addition to the language marked up in Chapter 30.30 we would like to add language in the work draft to clarify that:

A vessel that has been denied entrance to a harbor may not be stored in state waters for more than two weeks unless all hazardous materials and petroleum products have been removed.

Chapter 30.30. ABANDONED AND DERELICT VESSELS

Article 01. ABANDONED VESSELS

Sec. 30.30.010. Abandonment of vessel unlawful.

(a) A person may not store or leave a vessel in a wrecked, junked, or substantially dismantled condition or abandoned upon **the waters of the state** [ANY PUBLIC WATER], or at a port or harbor, of the state **or the municipality**, without the consent of the **state agency or municipality** having jurisdiction of the water, port, or harbor, or docked at any private property without the consent of the owner of the property.

(b) **A state agency, municipality** [THE DEPARTMENT] or a peace officer may remove a derelict vessel from public water in any instance when the vessel obstructs or threatens to obstruct navigation, contributes to air or water pollution, or in any other way constitutes a danger or potential danger to the environment.

(c) This section may not be construed to contravene any applicable federal law or regulation.

(d) A person who violates this section, upon conviction, is guilty of a misdemeanor and is punishable by a fine of not more than \$500, or by imprisonment for a period of not more than six months, or by both.

Sec. 30.30.020. Disposition of certain abandoned vessels.

A vessel that has been left unattended for a continuous period of more than 30 days and is in the waters of the state or on public property, or is on private property without authorization of the owner or occupant of the property, may be taken into custody by **a state agency, municipality** [THE DEPARTMENT] or a peace officer and disposed of by the **state agency or municipality** [DEPARTMENT] under this chapter.

Sec. 30.30.030. Limitation on applicability.

Wherever outside of an organized municipality in the state it is, or has become, the custom, common or accepted practice to anchor, moor, or otherwise leave a vessel in a port or harbor, or in the public waters, of the state in such a manner that it does not threaten or obstruct navigation,

or to store or otherwise leave a vessel without permission on public or private property, unattended for a period of more than 30 days, where climatic conditions make use of the vessel impracticable, or applicable provisions of law preclude use of the vessel during that period of time, the unattended anchoring, mooring, storing, or leaving of the vessel does not constitute abandonment of the vessel as that term is used in AS 30.30.010 - 30.30.020.

Sec. 30.30.040. Notice to owner.

On taking custody of an abandoned vessel, a written notice immediately shall be posted on the vessel and a duplicate of that notice sent by registered or certified mail, with a return receipt, to the registered owner of the vessel at the registered owner's last known address and to all lienholders shown on the records of a state or federal agency. 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 20 days after the mailing of the notice. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state department or a federal agency.

Sec. 30.30.050. Public auction.

If the vessel is not repossessed within 20 days after the mailing of the notice, the vessel shall be disposed of by public auction, through oral tenders, or by sealed bids, after public advertisement has been made once in a newspaper of general circulation. However, the public auction may not be held less than five days after the publication of the advertisement. If no bid is received, the vessel may be sold by negotiation, disposed of as junk, donated to a governmental agency, or destroyed.

Sec. 30.30.060. Possession by interested party.

A person having an interest in an abandoned vessel may take possession of it before the date of the public auction upon payment to the state agency or municipality [DEPARTMENT] of all port or harbor use fees, towing, handling, storage, appraisal, advertising, and any other expenses incurred by the state agency or municipality [DEPARTMENT] in connection with the vessel. If the person taking possession of the vessel is not the registered owner, the person shall, before taking possession of the vessel, pay the expenses incurred by the state agency or municipality [DEPARTMENT] and post adequate security which may not exceed the appraised value of the vessel. The security, if not forfeited, shall be returned to the person one year after receipt.

Sec. 30.30.070. When public auction not required.

Public auction is not required when the appraised value of an abandoned vessel, as determined by an independent appraiser is less than \$100. The appraiser must have at least one year of experience in the sale, purchase, or appraisal of vessels. Upon that determination and after public advertisement has been made once in a newspaper of general circulation, the state agency or municipality [DEPARTMENT] may sell the vessel by negotiation, dispose of it as junk, donate the vessel to a governmental agency, or destroy it.

Sec. 30.30.080. Effect of sale.

The transfer of interest by sale under AS 30.30.050 - 30.30.070 shall be evidenced by a bill of sale from the **state agency or municipality** [DEPARTMENT], considered a transfer by operation of law, and governed by applicable provisions of law.

Article 02. DERELICT VESSELS

Sec. 30.30.090. Derelict vessel.

A vessel that has been left unattended for a continuous period of more than 24 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 water of the state or on public property contrary to law, or regulations adopted by the **state agency or municipality** [DEPARTMENT], or the vessel has been left on private property without authorization of the owner or occupant of the property and if

(A) the vessel's certificate of number 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 a state 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 obliterated or removed in a manner that nullifies or precludes efforts to locate or identify the owner; or

(D) the vessel registration records of a state department and the marine document records of the United States Coast Guard contain no record that the vessel ever has been registered or documented and the owner's name or address cannot be determined.

Sec. 30.30.100. Disposition of derelict vessel.

(a) **A state agency, municipality or a peace officer** [THE DEPARTMENT] may take or cause a derelict vessel to be taken into custody immediately. Upon taking custody of a derelict vessel **the state agency or a municipality** [DEPARTMENT] shall concurrently

(1) publish a notice of intended disposition once in a newspaper of general circulation;

(2) when possible, post a notice of intended disposition on the vessel; and

(3) serve a duplicate of the notice of intended disposition by certified mail, with a return receipt, on

(A) the registered owner of the vessel, if known, at the registered owner's last known address or the address on record with a state department or the United States Coast Guard; and

(B) all lienholders who have filed a financing statement indexed in the name of the registered owner, or who are shown on the records of a state department or the United States Coast Guard.

(b) If the vessel is not repossessed within 20 days after the publication or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that when two or more prospective purchasers indicate an interest in purchasing the vessel the vessel will be sold at public auction to the highest bidder in the same manner prescribed under AS 30.30.050.

(c) If no prospective purchaser indicates a desire to purchase the vessel, the vessel may be disposed of as junk, donated to a governmental agency, or destroyed.

Article 03. VESSELS ABANDONED ON BUSINESS PREMISES OF PERSONS ENGAGED IN REPAIR BUSINESS

Sec. 30.30.110. Disposition of vessels by persons in vessel repair business.

When a person abandons a vessel on the premises of a vessel repair business, the owner of the business or the business owner's authorized representative may sell or dispose of the vessel under AS 30.30.110 - 30.30.150.

Sec. 30.30.120. When vessel abandoned.

A vessel is abandoned on the premises of a vessel repair business when all of the following conditions have been satisfied:

(1) the service requested or required by a person whose vessel is towed or brought to a vessel repair business, including but not limited to towing and rendering estimates of the cost of repairs, has been performed;

(2) no authorization is given to perform any further service with respect to the vessel, but the vessel is left on the repair business premises;

(3) the owner of the repair business or the business owner's authorized representative has given notice by registered or certified mail, with a return receipt, to the registered owner of the vessel at the address on record at the vessel repair business and the address on record in a state department or the United States Coast Guard, and to any person with a recorded interest in the vessel, stating that if the vessel is not repossessed within 30 days after the mailing of the notice it will be sold or disposed of; the notice also must contain a description of the vessel and its

location, and it need not be sent to an owner or a person with an unrecorded interest in the vessel whose name or address cannot be determined; and

(4) the vessel is not repossessed within the 30-day period specified in (3) of this section.

Sec. 30.30.130. Sale or disposition of vessel.

When a vessel is abandoned, the owner of the vessel repair business, or the business owner's authorized representative, after one public advertisement in a newspaper of general circulation in the state, may negotiate a sale of the vessel or dispose of it. However, the vessel may not be sold or disposed of within less than five days after publication of the advertisement.

Sec. 30.30.140. Disposition of proceeds.

The authorized seller of the abandoned vessel is entitled to the proceeds of the sale to the extent that compensation is due to the seller for services rendered with respect to the vessel, including reasonable and customary charges for towing, handling, storage, and the cost of notices and advertising required by AS 30.30.130. A lienholder shall receive priority of payment from the balance of the proceeds to the extent of the lien. Any remaining balance shall be forwarded to the registered owner of the vessel, if the registered owner can be found. If the registered owner cannot be found, the balance shall be deposited with the commissioner of administration and shall be paid out to the registered owner of the vessel if a proper claim is filed for it within one year from the execution of the sale agreement. If no claim is made within that year, the money shall escheat to the state.

Sec. 30.30.150. Effect of transfer of title.

The transfer of title and interest by sale under AS 30.30.140 is a transfer by operation of law. However, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

[ARTICLE 04. MISCELLANEOUS

SEC. 30.30.160. REGULATIONS.

THE DEPARTMENT SHALL ADOPT REGULATIONS UNDER AS 44.62
(ADMINISTRATIVE PROCEDURE ACT) TO CARRY OUT THE PROVISIONS OF THIS
CHAPTER.]

Sec. 30.30.170. Definitions.

In this chapter

(1) **“state agency” means all departments, divisions, and offices in the executive branch of state government; it does not mean an agency of the legislative or judicial branch of**

government or the University of Alaska ["DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES];

(2) "vessel" means every description of watercraft or other artificial contrivance, other than a seaplane on the water, used or capable of being used as a means of transportation on or through the water;

(3) "municipality" has the meaning given in AS 29.71.800;

(4) [(3)] "waters of this state" means the navigable waters within the territorial limits of the state, and the marginal sea adjacent to the state, as defined in AS 44.03.

Sec. 30.30.180. Short title.

This chapter may be cited as the Abandoned and Derelict Vessels Act.

The Seattle Times

Winner of Nine Pulitzer Prizes

Local News

Originally published September 8, 2012 at 3:56 PM | Page modified September 8, 2012 at 8:16 PM

Derelict vessels cause boatloads of trouble in state

Despite a program whose sole mission is to deal with derelict vessels, Washington state just can't keep up with the tide of these potential environmental catastrophes.

By Maureen O'Hagan

Seattle Times staff reporter



Hundreds of derelict or abandoned boats, both large and small, are slowly rotting on Washington's waterways.

And despite a program whose sole mission is to deal with these potential environmental catastrophes, the state just can't keep up with the tide.

In March, 226 vessels were on Washington's "derelict or abandoned" list. By June, the state or other agencies had helped move, shore up, or dispose of 23 of them — which sounds pretty good, until you realize that, in the meantime, 18 more vessels were added to the list. Some boats are removed, only to wind up back on the list a second or third time.

Melissa Ferris, who runs the Derelict Vessel Removal Program, can rattle off stories. There are the boats that appear out of nowhere in state waters, dumped by their

owners. Those that break anchor and float away, battering the docks or creating a hazard to navigation. Those that the owner swears are seaworthy, right up to the day they sink. They may contain oil, asbestos and other hazards.

Despite all that, the state just lets most of them sit — one leak away from trouble. Private-property rights make it cumbersome to intervene. Environmental regulations make it expensive. Even government policies that seem perfectly reasonable have turned out to contribute to the problem.

But the main reason derelict vessels are so vexing is this: The economics just don't pencil out. The entire budget for Ferris' agency is \$750,000, yet it can cost far more than that to dispose of a single large vessel.

Most of them don't make news. They're smaller vessels, and amount to little more than eyesores. But sometimes, boats on Ferris' list turn into multimillion-dollar problems.

Like the Deep Sea.

In May, the 140-foot former fishing boat sank in Whidbey Island's Penn Cove, spilling oil within swimming distance of some of the state's prime shellfish beds. It cost the government nearly \$5.4 million to clean up the mess and dispose of it.

But the Deep Sea was a problem vessel long before that. Like many boats on the list, it was passed from owner to owner, until at some point, it was worthless. The vessel was abandoned by its owner at the Port of Seattle; the Port sold it to a guy with no real means to deal with it. The Port did this even though it feared the boat would show up on "the evening news with our name attached," one email obtained under the state's open-records act said.

And that wasn't anywhere near the state's worst derelict-vessel disaster. The 430-foot Davy Crockett cost \$20 million to clean up last year after the owner began to dismantle it, illegally, on the Columbia River.

In the end, it's the public who winds up footing the bill.

"Common problem"

Every boat has a story. Mostly, the story involves a good working life, and a long, slow death.

Washington, with its boating culture, is hit particularly hard.

"Most public ports have a lot of abandoned boats," said Ferris. "It's a common problem."

It's also one with an inescapable calculus: A boat can cost a lot of money when things are good. It can also cost a lot to get rid of.

First of all, rotten wood is worthless. Big metal boats are worse. They're often sprayed with asbestos. They can be full of lead paint and other hazards, too. Because of stringent environmental regulations, there are just a handful of places in the state where you can legally dismantle them. "It's going to cost you more to get rid of than it's worth," Ferris said.

The 186-foot Northern Retriever, for example, was rotting in Grays Harbor for years, with holes in its hull and no means of propulsion. It wound up costing the state \$835,000 to dismantle and dispose of. Its 1,000 tons of metal sold at scrap for \$78,000.

If you're a maritime business owner who needs to retire a boat, the calculus presents a real dilemma.

"You'd have to have a pretty strong company to commit to spending (hundreds of thousands) to get rid of a vessel that's becoming obsolete," Ferris said.

So what do you do? Some owners strip off parts that can be turned into cash. Then they'll sell their misfit vessel for a pittance, often to someone who thinks he can make a fortune.

Which brings us to the Deep Sea.

Fees pile up

Built in 1947, it was a pioneer in the Alaskan crabbing industry. It changed owners over the years, eventually winding up in the hands of Factotum Fisheries. In 2005, Factotum moored the boat at the Port's Fishermen's Terminal, paying \$1,500 per month. But at some point, the owner just stopped paying. By July 2010, the outstanding bill was \$31,000.

Factotum's owner told the Port he was sick with cancer and didn't have the money. At this point, the Deep Sea was not only technologically outdated — it was a liability.

"We were kind of left holding the bag," Port spokesman Peter McGraw said.

The Port wanted its \$31,000. It wanted a paying customer in that slip. But most of all, it wanted the boat gone.

"The port has become increasingly concerned that the vessel, which is essentially an uninsured derelict, constitutes a pollution and liability hazard," a lawyer for the Port wrote in May 2011.

Port officials figured dismantling the Deep Sea could cost \$500,000. So they decided to unload it.

The Port's Michael DeSota urged caution.

"The background and financial stability should be checked thoroughly on any prospective buyer to assure this doesn't wind up in the evening news," he wrote in an email.

Twice, the Port tried to sell it at maritime auctions. No one was willing to pay even a buck.

"Anybody legitimate is going to walk through it and go 'no thanks,' " Ferris said.

Then Port officials tried Craigslist.

A Maple Valley man named Rory Westmoreland stepped forward. McGraw said that since Westmoreland was a scrap dealer, he seemed like a good fit.

"We are not in the business of handing over a large vessel like this to just anyone who comes off the street," he said.

If Port officials had checked, they would have found Westmoreland had a long history of run-ins with neighbors, code inspectors, the Environmental Protection Agency, police and others.

Eventually, the Deep Sea was sold to Westmoreland for \$2,500.

It was no longer the Port's headache.

Floating junkyard

When Ferris got word the boat was anchored in Penn Cove, she was not happy. She also didn't jump right in and try to seize it, even though that's what people were clamoring for.

Another boat, the Cactus, was too fresh in her mind.

The Cactus' best years were spent in the Coast Guard, working as a buoy tender. But in the 1970s, the vessel was past her prime, so the Coast Guard did what the taxpayer might expect: sold it.

At some point, the Cactus wound up in the hands of David Thomsen. He told the state he bought her for \$35,000 and planned to turn her into a floating sawmill.

He also said that he was the "comptroller of the currency"; that he was "part owner of a \$300 trillion gold mine"; that he "invented the silicon chip"; and that he owns Microsoft and Vulcan, according to Ferris' file on the case.

"If people can't live in society, boats are kind of a last bastion," Ferris said. "We do get a number of people with mental-health issues."

By the mid-2000s, the Cactus appeared to be little more than a floating junkyard moored in the Foss Waterway.

The law allows a boat one month in the public waterway before it has to move. In September 2003, Thomsen received his 30-day notice. On day 29, Ferris said, Thomsen used the tides, the wind and a 20-foot fishing boat to tow it to Maury Island. Authorities were hesitant to give him another 30-day notice.

"We could end up chasing this vessel around Puget Sound," one official wrote in an email. "Would that create greater danger?"

The vessel sat there for years. By 2008, it was filled with buckets of paint and epoxy; rusted steel plates, rubber hoses, PVC pipe, leaking pails of seam filler, old newspapers, mattresses, boxes of tiles and who knows what else. There was also fuel and asbestos insulation.

Meanwhile, the boat had been pillaged. Ten-foot pieces of metal had been cut out of the deck. Brass valves were removed.

"The only thing that was keeping the boat from sinking was these corks that had been hammered in," Ferris said.

At one point, it broke anchor and went swinging into the aquatic reserve. Another time, according to Ferris, Thomsen called 911 because it was sinking. He got it under control, but King County decided to step in. In 2008, under Thomsen's protest, the Cactus was towed away for dismantling.

Years later, the boat is still sitting at a Ballard shipyard because there wasn't enough money left in Ferris' budget to scrap it. Between moorage fees, cleaning off the junk, pumping out the holds and other emergency measures, it's cost the state more than \$348,000 so far. Each month is another \$3,000 in moorage.

"We've been baby-sitting this stupid boat for four years basically," Ferris said.

This fall, Ferris said, she'll finally be able to finish the job, thanks to a lump sum from the Legislature.

But the Cactus had taught her a valuable lesson: When you seize a boat, it becomes *your* boat. And your problem.

Fire dooms Deep Sea

Around 1 in the morning one Saturday in May, smoke was pouring from the Deep Sea. By Sunday, it had sunk. The cause is under investigation.

"I've never had any of the vessels on our list spontaneously combust," Ferris said. The state has taken a lot of heat for not swooping in and going after Westmoreland or getting the Deep Sea out of Penn Cove.

But the way Ferris sees it, she didn't have a lot of options. It's the same with the other big boats on the list. Most of the owners can't address the problem, even if she threatens them with fines or even criminal charges.

She definitely doesn't want to wind up with another Cactus. Nor does she want another Deep Sea.

It's not entirely clear what can be done. Five years ago, Ferris' agency wrote a long report outlining the issues and asked for new legislation. Aside from strengthening a little-used criminal misdemeanor statute, almost none of it passed.

After the Davy Crockett disaster, Washington and Oregon joined to create a Derelict Vessel Task Force to push for new state and federal laws. What kind? It's unclear.

At this point, they're just looking for viable ideas.

News researcher Gene Balk

contributed to this report.

Maureen O'Hagan: 206-464-2562 or mohagan@seattletimes.com

ADN.com

Next Story >

Avalanche slows Seward Highway traffic; more delays expected Tuesday

Harbor officials meet on derelict vessel issue

Published: October 22, 2011



Spanky Paine, a tug built in 1894 that participated in the Spanish American and both world wars, has sat at the Homer Port and Harbor for nearly a decade abandoned by its owner. It was recently deeded to Peninsula Scrap and Salvage to recycle its usable metals on the world market.

NAOMI KLOUDA / Homer Tribune

HOMER: Abandoned boats create monetary and environmental ills.

By NAOMI KLOUDA — Homer Tribune

HOMER -- A 120-foot landing craft called the Sound Developer sank in Cordova's harbor three winters ago, leaving it broken in parts and leaking whatever hazardous fuels were aboard.

The craft was abandoned by its owner, who is nowhere to be found. A consortium of agencies trying to deal with the problem, and \$5 million later, the landing craft and its pieces remain on the harbor floor. Its wheelhouse is partially above water, creating a navigation hazard, with a promised removal coming soon.

This was one of the cautionary tales highlighted by Municipal Attorney Holly Wells at a recent gathering of state harbor officials. The Alaska Association of Harbormasters and Port Administrators chose Homer for its annual conference. The session on what to do about derelict boats engaged the group into overtime.

Expect the problem of derelict vessels abandoned in harbors to worsen in the next decade. An aging fleet of fishing and transportation vessels is approaching the end of its useful life, Wells told the gathering.

"In 10 years, you will be overwhelmed," Wells said.

She suggested solutions that ranged from new laws to protect harbors to good networking among harbor officials.

The economic heyday of commercial fisheries brought many vessels north. Old state ferries, tugs used for hauling freight, World War II transports transformed into floating processors - many are still out there. Downsized fisheries left many of them obsolete, and Alaska's harbors became their last stop.

Homer Harbor Master Bryan Hawkins calls it "the hot potato problem" when one of those ships is evicted from one harbor only to go rest in another.

"The hot potato plan sucks when you get stuck with a derelict. We managed to get four of our derelicts broken down, two changed owners and one is still in the harbor," Hawkins said. "The problem is that most left to other places in the state. I'm not proud of that. I don't like it; it's not a solution."

With the help of a phone tree, harbor officials can alert one another when a derelict is limping in their direction. Wells recommended the harbor officials immediately establish a communication tree.

There are legal pitfalls that can be avoided, Wells advised them. Armed with strong city tariffs and codes spelling out a list of safety requirements, cities can prevent problem boats from becoming an economic and environmental nightmare like the Sound Developer. Hawkins, who believes that Homer is "an overachiever in the derelict vessel problem," set out to find solutions. Hawkins and Deputy Harbor Master Matt Clarke wrote letters and spoke with the U.S. Coast Guard, the Environmental Protection Agency and the Alaska Department of Environmental Conservation.

If old tugs like the Spanky Paine or the Honcho, now being salvaged for scrap metal, were to sink in the harbor, whatever waste oil and other pollutants that remained aboard would also sink.

"I was embarrassed to ask, is there a federal or state plan to help with these boats? ... But, no, in the end I found we're on our own," Hawkins said. "We will continue to push for, number one, them to recognize the problem, and number two, find a workable solution before the costs to the public reach the millions like they have in the case of the Sound Developer."

Hawkins began taking legal steps, working with Wells, to rid the harbor of boats that represent "clear and present danger."

Wells, in searching case histories, discovered an ancient role of federal protection stretching back to the 18th and 19th centuries. While collecting on debt, placing liens or evicting owners, harbors must avoid actions that could be deemed unconstitutional. Harbors also can't reasonably exclude a ship or boat seeking refuge, outlined as the owner's legal rights under admiralty law.

But cities can create legal means to protect their waters.

"The law requires a city to act 'rationally' in regard to vessels. That means having it spelled out in tariffs and code ahead of time. Here is an itemized list of things you cannot do; here are the requirements you must meet in order to remain in the harbor," Wells said.

Homer passed a law that requires each boat in the harbor to be moved on its own power twice per year at least 60 days apart. This helps to identify boats too broken down to move or those abandoned by their owners. So far this has been a valuable tool, Hawkins said.

A harbor official from Ketchikan asked Wells what can be done if an ailing ship is escorted into the harbor by the U.S. Coast Guard.

"You have control. If the ship is falling apart at the seams, you can talk about the 'clear and present danger' it presents. The Coast Guard can be your ally," Wells answered. "This threat can help you immediately get that vessel out of the harbor."

Unpaid moorage fees from abandoned boats mount into the thousands of dollars, representing a double loss to cities since they can't rent the space to a working boat.

Hawkins found that by working with owners, offering to forgive half the moorage fees on the condition of getting the boat out of the harbor, he can achieve the desired results.

In the cases of the Spanky Paine and the Honcho, Homer handed over both tugs to Peninsula Scrap and Salvage, receiving no monetary compensation.

"But the way we look at it, we get back 180 feet of moorage space, and we've mitigated an irritation and prevented a future disaster," Hawkins said.

Of the 14 ailing vessels that formerly inhabited the Homer harbor, all the large derelicts are gone. Now there are a few smaller, 40-foot class vessels on the radar.

[Back to Top](#)
[< Previous Story](#)

Family of woman who vanished still fears, hopes

[Next Story >](#)



Avalanche slows Seward Highway traffic; more delays expected Tuesday

[Email Newsletters >](#)

[Manage newsletter subscriptions](#)

[Tablets >](#)

[Apps and services for tablet devices](#)

[Mobile >](#)

[Apps and services for your mobile phone](#)

[Social Media >](#)

[Get updates via Facebook and Twitter](#)

[e-Edition >](#)

[Your daily paper delivered to your computer](#)

[Home Delivery >](#)

[Manage your home delivery account](#)

//

Derelict ship causes ammonia scare

The Associated Press | Posted: Wednesday, January 2, 2013 3:36 pm

KODIAK, Alaska - A derelict fish processing ship caused an ammonia scare in Kodiak when two crewmembers living onboard the vessel reported a leak.

Kodiak firefighters were joined by Coast Guard firefighters on Monday in responding to reports of a leak on the 169-foot Pacific Producer, according to the Kodiak Daily Mirror (<http://is.gd/ZqpKgN>). Kodiak City Pier 2 was cordoned off for five hours.

Anhydrous ammonia is commonly used as a refrigerant aboard fishing vessels and in fish processing plants. It can cause severe lung damage if inhaled. High concentrations can be fatal.

Firefighters boarded the ship and shut all the valves connected to the ship's ammonia system.

Subsequent tests found no ammonia circulating in the air.

A storm rolling through Kodiak both helped and hampered firefighters' efforts. Winds gusting up to 52 mph whisked away the ammonia leak so quickly that firefighters were able to walk next to the boat without protective gear, and no evacuations were required.

The wind also prevented firefighters from getting an accurate reading on the size of the ammonia leak.

"We never got a reading because it was always going away from us, which was a good thing," Kodiak deputy fire chief Jim Mullican.

The Pacific Producer has been tied up at Pier 2 for more than two months after its owner, captain and chief engineer all walked away from the boat. Kevin Briggs, the sole remaining engineer aboard the Pacific Producer, said he came aboard 3 months ago to help process fish, but the ship hasn't seen a single fish and he's ready to go home.

"It's just been a nightmare, basically," he said.

Last month, the Pacific Producer's owner left Kodiak to find operating capital, and he hasn't returned since.

"We've just been waiting for him to come up with what he calls 'investment money,'" Briggs said.

Deputy Kodiak harbormaster Lon White said the city wants the ship gone.

"We've asked the owner to remove it from city facilities and they have not done so, either been unable or refused to. Regardless, it's still at our facility," he said.

//

Diesel spill from derelict ship in Kodiak harbor reported

The Associated Press | Posted: Sunday, January 6, 2013 5:21 pm

ANCHORAGE, Alaska - The Coast Guard says an estimated 150 gallons of diesel fuel from a fish processing vessel spilled into the Kodiak harbor.

KTUU (<http://is.gd/LJDWHd>) says the Coast Guard and other agencies responded to the leak Saturday from the vessel Pacific Producer.

Petty Officer Guy Hughey says the fuel leaked inside of the ship before some of it was pumped into the harbor.

Hughey says about 500 gallons of diesel discharged into the vessel's bilge, triggering the bilge pump.

The fire department also tested the atmosphere for ammonia used in the ship's refrigeration system.

Authorities say there was no ammonia threat to the Pacific Producer's crew.

Refloating derelict boat

Posted: Wednesday, November 26, 2008

Harbor employees Pete Frank, left, and Doug Liermann work Tuesday to refloat a derelict fishing boat after it sank in Aurora Harbor earlier this fall. The boat was towed to a beach near the Yacht Club at high tide so it could be drained and refloated on a future tide. Port Director John Stone said the boat would be transported to a location where a private contractor could crush it and take it to the city landfill. Stone said the boat's owner would be charged for the work.



Paul,

Valdez + Cordova are having issues with

"documented" vessels in their municipal harbors

that are in arrears for their dockage fees.

What I'm being told is that because there

are "documented" vessels, the municipalities are

prevented from seizing them because they are,

^{Federal}
by statute, under the jurisdiction of the USCG.

Coast Guard however does not have the funds to

deal with the derelict vessels that are literally

sinking in the ports of these cities. What do

we / they / USCG / Feds do?

↵

I would like to take a moment to address the issue of derelict vessels in Alaska. As a former office manager of the Sitka Harbor Department (9 years) we had an ongoing derelict vessel problem which still continues. Each time we went through the legal process we had in place it would take more than 90 days before we could come close to seizing the vessel. Then before it would be seized the owner would sell it to someone else and the process would have to start over again. It was extremely frustrating!

There are also – of course the vessels you don't want because they will cost so much to get rid of once you have them. Perhaps some sort of fund should be established to help pay for that sort of problem – particularly when there is possibility of endangering the environment with fuel/oil spills, etc. The attached had suggested possible revisions to the State Statues that would certainly be a start to resolving those issues.

As an owner of healthy vessels I find myself very nervous when one of those derelict vessels is tied to the same float as I am. I worry they will sink or catch fire and cause damage to my boats. I don't know if the attached document is the one you are looking at but I strongly urge you to consider supporting the changes suggested in it.

Thank you.

Kim

Kim Elliot

7 Maksoutoff Street

Sitka, AK 99835-7556

(907) 747-7677

email: kelliot@gci.net

Aquatic Resources District Offices

DNR manages 2.4 million acres of state-owned Aquatic Lands statewide—lands under the marine and fresh waters, and beaches. These mostly submerged lands offer aquatic habitat, navigation, commerce and public use and access. DNR's aquatic districts provide on-the-ground management.

www.dnr.wa.gov

Orca Straits District Aquatic Resources

919 N. Township St.
Sedro Woolley, WA 98284
(360) 856-3500



Rivers District Aquatic Resources

P.O. Box 280
601 Bond Rd.
Castle Rock, WA 98611
(360) 577-2025

Shoreline District Aquatic Resources

950 Farman Ave.
Enumclaw, WA 98022
(360) 825-1631

Emergency Contacts

Sinking vessels; oil spills; spills of other hazardous materials—24-hour emergency response numbers in Washington State:

Department of Emergency Management (State) (800) 258-5990

Marine Emergencies Coast Guard Marine Safety Office
(206) 217-6232 *Seattle*
(503) 240-9320 *Portland*

Department of Ecology (State) (360) 407-6300
24-hour Spill Response Hotline

Derelict Vessel Removal Program (State) (360) 902-1574 or
Email: dvrp@wadnr.gov



PRINTED ON RECYCLED PAPER. DNR COMMUNICATIONS.



Removing derelict and abandoned vessels that threaten the health or safety of people and wildlife



WASHINGTON STATE'S

Derelict Vessel Removal Program

In addition to vigorous use of commercial navigation through much of the state, the people of Washington have embraced recreation that involves sailboats and powerboats. However, an increasing number of recreational and commercial vessels are found abandoned or in such disrepair that they are in danger of sinking. In response to this growing problem, the 2002 State Legislature authorized many public agencies to remove and dispose of abandoned and derelict vessels.

As steward of the state's 2.4 million acres of aquatic lands, the state Department of Natural Resources (DNR) manages the Derelict Vessel Removal Program (DVRP). DNR removes and disposes of derelict vessels, offers expertise to help other agencies with removal efforts, and reimburses them most of the vessel removal and disposal costs.

What Damage Can a Derelict or Abandoned Vessel Cause?

Derelict and abandoned vessels are more than an eyesore. They can be real threats. Pollution associated with vessels poses a risk to people and the environment. Contamination is mainly caused by fuel spills (gas or diesel), which occur when a vessel sinks or breaks up.

Drifting, beached, broken-up or sunken vessels can threaten human safety, be a navigational hazard and have an impact on aquatic habitats.

▲ The 'Holiday' was the first vessel removed under the program. Posing a significant threat to navigation, it was removed from lower Budd Inlet by DNR in 2003.

COVER PHOTO COURTESY OF BLACKWATER MARINE TOP PHOTO BY MICHAEL RECHNER

Pollution associated with derelict and abandoned vessels poses a risk to people and the environment.



Drifting, beached, broken-up or sunken vessels can threaten human safety and navigation, and have an impact on aquatic habitats.

MAXIMUM VESSEL LENGTH
200 FEET

Unmarked exposed portions of sunken boats can be navigation hazards, and if a collision occurs with sunken vessels just below the surface, serious injury can also occur.

PHOTO COURTESY OF GLOBAL DREDGING & SALVAGE INC



Derelict vessels are removed from the water using the most environmentally sound methods available. Sunken vessels are raised using a combination of lift bags and high pressure pumping, and pollutants are removed and disposed of.

What Is the DNR's Derelict Vessel Removal Program?

The Derelict Vessel Removal Program has three main responsibilities associated with removing vessels up to 200 feet long.

- 1 Remove and dispose of derelict or abandoned vessels found in Washington State's waters. DNR removes vessels on a priority basis with those in danger of sinking or posing a threat to human health or safety highest on the list.
- 2 Manage Program Operations
 - ▶ Reimburse authorized public entities up to 90 percent of the cost of vessel removal and disposal. The remaining 10 percent can be in in-kind services such as personnel time and equipment use provided by the public entity.
 - ▶ Manage the Derelict Vessel Removal Account
 - ▶ Provide guidance and assistance to authorized public entities and the public.
- 3 Maintain the Derelict Vessel Inventory Database that holds information on all of the vessels reported since the program began in 2002.

Derelict vessels may contain large quantities of oil or other toxic substances. If leaked they can injure or kill marine mammals, waterfowl and other aquatic life, and contaminate aquatic lands, nearby shorelines, and water quality.

Vessels that settle on the bottom can disrupt the aquatic environment, scouring or crushing sensitive habitats like eelgrass or kelp beds.

What Can Authorized Agencies Do?

Authorized public entities take steps to address the derelict or abandoned vessel problem on aquatic lands in their jurisdiction:

- ▶ Send the reporting form to the Derelict Vessel Removal Program to establish the vessel status and receive priority ranking.
- ▶ Send pre-custody letters to owners of the vessel.
- ▶ Follow Derelict Vessels Act notice requirements and take temporary possession and custody of vessel.
- ▶ Remove and dispose of vessel, or contract with a private company or individual to do so.
- ▶ Seek from the vessel owner reimbursement of costs associated with removal and disposal.
- ▶ Apply to the DVRP for up to 90 percent of the associated removal and disposal costs.

If an authorized agency is unable or unwilling to undertake removal, it may ask DNR to take the lead.

Anti-fouling paints and other toxic coatings slough off the vessel and mix with sediments in the area. They can contaminate the organisms that feed larger fish and wildlife, and enter the food web that feeds people, too.

Who Is Authorized to Remove Vessels?

Derelict vessels may be removed by Washington DNR or other public agencies:

- ▶ Port Districts
- ▶ City, town or county with ownership, management or other jurisdiction over aquatic lands
- ▶ Metropolitan Park Districts
- ▶ State Parks and Recreation Commission
- ▶ State Department of Fish and Wildlife

Where Does Program Funding Come From?

About \$400,000 is raised each year in the state, from a \$2.00 surcharge on the annual vessel registration fee and \$5.00 surcharge on the foreign vessel identification document.

The state's Derelict Vessel Laws are in Revised Code of Washington (RCW) 79.100.

Program information, guidelines, reporting, and application forms are on DNR's webpage:

www.dnr.wa.gov.

Also linked are the Derelict Vessel Inventory, and the program funding account balance.

Abandoned and Derelict Vessel Removal

*Understanding the process
can ensure success.*

by LCDR CHARLES BRIGHT

U.S. Coast Guard Office of Marine Transportation Systems

Abandoned and derelict vessels can be seen in most ports and communities as one drives across rivers or while out boating and fishing on the waterways. These vessels are unsightly, threaten safe navigation, and can pose environmental hazards.

The Problem

Vessels are abandoned or become derelict for many reasons. Some owners simply don't take care of their boats

and let them fall into disrepair. Other vessels are stolen or taken for "joyrides" and then set adrift or discarded. Hurricanes or tornadoes can damage vessels and even move them from anchorage.

The recent economic downturn has also played a role. A 2009 New York Times article documented that a growing number of people are abandoning their boats because they can't afford the payments.¹



A derelict vessel is dismantled on a bank of the Snohomish River in Everett, Wash. U.S. Coast Guard photo by Chief Petty Officer Paul Roszkowski.



Coast Guard Chief Petty Officer Ian A. Woods, left, Sector New York, and Petty Officer 3rd Class Huynh A. Nguyen, Sector Mobile, oversee hazardous materials remediation and vessel recovery in Bayou La Batre, Ala. U.S. Coast Guard photo by PA2 Lisa Hennings.

Unfortunately, these vessels can number in the hundreds in some locations, such as states with large boating publics like Florida, Georgia, and Washington. In some of these locations, vessels have been abandoned for such a long time that no one can remember how they got there or who the owners are.

Who Has the Lead?

If the owner cannot be found or is unable to remove the vessel, many times removal will fall to the federal or state government. Along with state environmental and enforcement agencies, four federal agencies play a role in abandoned and derelict vessel removal:

- the National Oceanic and Atmospheric Administration,
- the U.S. Army Corps of Engineers,
- the U.S. Coast Guard,
- the Federal Emergency Management Agency.

Even with the multitude of authorities, limited funding and resources can pose a problem.

Best Practices

To address this, in September 2009 the National Oceanic and Atmospheric Administration hosted the first Federal Abandoned and Derelict Vessel Workshop, where the four federal agencies presented their processes for dealing with vessels to the state agencies. In addition, several state program managers presented best practices for dealing with the numerous vessels within their states.²

For example, the Washington State Department of Natural Resources funds vessel removal primarily through an additional fee on state vessel registration. This fund provides up to 90 percent of the removal and disposal costs. The department also carefully prioritizes derelict vessels to determine which present the greatest threat to navigation, safety, and the environment.³

The Florida Fish and Wildlife Conservation Commission may remove vessels that are considered derelict under state regulations.⁴ The vessel owner is contacted and a notice is posted on the vessel identifying it as a



derelict vessel. The owner has five days to remove the vessel. If the owner doesn't take any action, he or she can be charged with a first-degree misdemeanor and may also be charged for the cost of removing the vessel.

Coordinating Efforts

Understanding all the authorities and jurisdictions is just the beginning when it comes to dealing with the problem of abandoned and derelict vessels. With the multitude of state and local programs and federal authorities, coordinating this process can be a

For more INFORMATION:

For additional information on abandoned and derelict vessels or questions regarding a specific vessel or situation, contact the local Coast Guard sector via www.Homeport.mil, the local Army Corps District Office at www.USACE.army.mil, or the NOAA Marine Debris Program at <http://marinedebris.noaa.gov/>.

daunting task. Federal and state agencies and local or private groups should come together prior to any incident to establish working relationships.

Knowing where one agency's authority and funding stops and another begins facilitates this process. For example, the Coast Guard may use its

funds to remove oil or hazardous material from the vessel. From there, the Army Corps or a state agency may take over to remove the vessel from the water. Once removed, the vessel has to be salvaged for its remains or

Which Agency Does What?

The National Oceanic and Atmospheric Administration

NOAA responds to abandoned and derelict vessels through the National Marine Sanctuaries Act when a vessel is within or threatens resources within a sanctuary.

NOAA additionally supports activities in the marine environment by funding grant opportunities such as those focused on vessel removal and providing technical assistance through the Marine Debris Research, Prevention, and Reduction Act of 2006, which applies to all waters.

NOAA's personnel may provide scientific and technical assistance to a federal on-scene coordinator, when requested.

The United States Army Corps of Engineers

USACE is involved with abandoned and derelict vessels when a vessel sinks in or impacts a navigable channel. It may conduct a channel survey to determine whether the vessel constitutes an obstruction to navigation.

The location of the vessel with respect to the navigation channel will determine whether further USACE involvement in removal is warranted, per internal guidelines and available funding.

The United States Coast Guard

The USCG is involved with abandoned and derelict vessels by its designation as the federal on-scene coordinator

to oversee federal response efforts for the containment, removal, and disposal of oil or hazardous substance releases into the marine environment.

The vessel may be removed as part of the abatement process or could be transferred to another agency for final disposal.

The Coast Guard also has authority to remove abandoned barges of greater than 100 gross tons under the Abandoned Barge Act. Under this act, the Coast Guard can remove the vessel if the cost of removal does not exceed its value.

Prior to removal, the Coast Guard may also mark vessels if they present a hazard to navigation.

The Federal Emergency Management Agency

FEMA is involved with abandoned and derelict vessels via the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), which gives FEMA the responsibility of coordinating the federal government's response to disasters.

FEMA may assign another federal agency to remove eligible vessels when the state and local governments certify that they lack the capability to perform or contract for the work.

Additionally, FEMA may reimburse applicants for the cost of vessel removal and disposal through grant assistance.





A vessel is moved to Sparrows Point in Baltimore. U.S. Coast Guard photo.

moved to a proper disposal site such as a landfill. This process may again be handled by a state agency or by a private contractor.

Planning the process from beginning to end is key to avoiding roadblocks and other unwanted situations. No one wants a vessel removed only to find out there is no place to put it. It may also be that one agency (a state historical preservation office, for example) asserts itself in the operational review and approval process because the vessel might be considered a historical landmark. These types of situations do happen and can best be avoided through a fully coordinated plan.

About the author:

LCDR Charles Bright has served in the Coast Guard since 1991. He is a prior enlisted marine science technician and has served on a patrol boat, on an aids to navigation team, and in various marine safety positions including inspections, investigations, and waterways management. A recent graduate of the Coast Guard Transportation Management graduate program from George Mason University, he also holds a master's degree in environmental management from the University of Maryland University College.

Endnotes:

- ¹ David Streitfeld, "Boats Too Costly to Keep Are Littering Coastlines," New York Times, March 31, 2009.
- ² N. Parry and K. McElwee (eds.), 2010. Proceedings of the Workshop on State-level Responses to Abandoned and Derelict Vessels. September 15-17, 2009. NOAA Technical Memorandum NOS-OR&R-37.
- ³ Washington State Department of Natural Resources, Derelict Vessel Removal Program, http://www.dnr.wa.gov/RecreationEducation/Topics/DerelictVessels/Pages/aqr_derelict_vessel_removal_program.aspx.
- ⁴ Florida Fish and Wildlife Conservation Commission (FWC), "FAQs: Derelict Vessels," http://myfwc.com/Newsroom/Resources/News_Resources_DerelictVessel.htm.

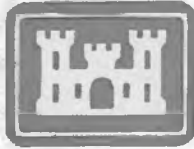




**MEMORANDUM OF UNDERSTANDING BETWEEN
UNITED STATES ARMY CORPS OF ENGINEERS
AND
UNITED STATES COAST GUARD**

**REGARDING
THE MITIGATION OF OBSTRUCTIONS TO NAVIGATION**

- 1. PARTIES:** The parties to this Memorandum of Understanding (MOU) are the U.S. Coast Guard (USCG) and the U.S. Army Corps of Engineers (USACE).
- 2. PURPOSE:** The purpose of this MOU is to improve the efficiency and effectiveness of the USCG and the USACE's routine responses under each agency's respective authorities for mitigating obstructions to navigation. This MOU also provides procedures on coordination to determine whether an obstruction is a hazard to navigation and procedures to determine the appropriate corrective actions to be taken by both agencies. This MOU replaces the Memorandum of Agreement between Department of Army and US Coast Guard SUBJECT: Coast Guard and Department of Army Responses to Marking and Removal of Sunken Vessels and Other Obstructions to Navigation, signed by USCG October 16, 1985.
- 3. OBJECTIVES:** The following are the objectives of this MOU:
 - a. Promote close coordination and cooperation between the USCG and the USACE leading to prompt and decisive action to mitigate obstructions declared to be hazards to navigation.
 - b. Provide guidance on the parameters and procedures for making mutual decisions for determining when an obstruction should be declared a hazard to navigation.
 - c. Identify the corresponding Chain-of-Command relationships for resolving differences of opinion between the USCG and the USACE as to the appropriate corrective action to initiate for hazards to navigation.
 - d. Assure timely and effective action to provide safe navigation to the maritime community.
 - e. Develop individual USCG and USACE agency instructions to implement this MOU.
- 4. AUTHORITY:** The parties to this MOU are authorized to act under the following provisions:
 - a. 14 U.S.C. § 93(d)
 - b. Rivers and Harbors Act of 1899, 33 U.S.C §§ 401, 403, 407, 409, 414, and 415.
 - c. Specific Authorized Federal Navigation Project language regarding obstruction removals.
 - d. Ports and Waterways Safety Act, 33 U.S.C. 1231.



- e. Marking of Obstruction, 14 U.S.C. 86.
 - f. Abandoned Barge Act of 1992, 46 U.S.C. 4701-4705.
- 5. APPLICABILITY:** This MOU addresses routine (non-Federally declared emergency) responses to obstructions to navigation and applies to the navigable waters of the United States. This MOU specifically does not apply to the following:
- a. Federal disaster response activities conducted under the Robert T. Stafford Disaster Relief and Emergency Act.
 - b. Federal on-scene coordinated directed response activities conducted under the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Part 300).
 - c. Activities that involve bridges or causeways over navigable waters that are covered under the existing Memorandum of Agreement between the USCG and USACE signed in 1973.
- 6. DEFINITIONS:** For the purpose of this MOU, the following definitions apply:
- a. Obstruction: Anything that restricts, endangers, or interferes with navigation.
 - b. Hazard to Navigation: An obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.
 - c. Navigable Waters: Both USACE and the USCG have defined navigable waters in their regulations. The applicable USACE definition is at 33 C.F.R. Part 329 and the applicable USCG regulation is at 33 C.F.R. § 2.36(a).
 - d. Responsible Offices and Field Units:
 - (1) USACE:
 - i. Director of Civil Works, Headquarters, USACE (HQUSACE).
 - ii. Chief, Operations and Regulatory, Headquarters, USACE (HQUSACE).
 - iii. Division Commander, USACE Divisions (Field Unit).
 - iv. District Commander, USACE Districts (Field Unit).
 - (2) USCG:
 - i. Assistant Commandant for Prevention Policy, USCG Headquarters (USCG HQ).
 - ii. Director of Marine Transportation Systems, USCG Headquarters (USCG HQ).
 - iii. District Commander, USCG Districts (Field Unit).
 - iv. Sector Commander, USCG Sectors (Field Unit).
- 7. ROLES AND RESPONSIBILITIES:** Upon receiving reports of obstructions to navigation, each agency, through its field units, will take the following actions:



- a. **Initial Notification:** Upon receiving a report of an obstruction to navigation, each agency shall immediately notify their counterpart and relay any corrective actions that have been taken.
- b. **Determination of Hazard:** Determine through joint consultation and agreement between agency field units if an obstruction is a hazard to navigation using the following factors for determination.
 - (1) **Determination Factors:** Factors are not all inclusive, but should be considered in determining if an obstruction creates a hazard to navigation and, if so, the acceptable level of response and corrective action(s) appropriate to alleviate or reduce the impact of the hazard to navigation.
 - i. The degree to which the obstruction currently restricts, endangers, or interferes with navigation on the navigable waters of the United States.
 - (a) Location with respect to the Federally Maintained Channel.
 - (b) Location with respect to other navigational traffic patterns.
 - (c) Navigational difficulty in the vicinity of the obstruction.
 - (d) Clearance or depth of water over obstruction.
 - (e) Fluctuation of water level and other hydraulic characteristics.
 - ii. Physical characteristics of the obstruction, including cargo (if any exists).
 - iii. Potential for possible movement of the obstruction.
 - iv. Marine activity in the vicinity of the obstruction including:
 - v. Draft of vessel traffic.
 - vi. Type of vessel traffic including commercial, Federal, and recreational.
 - vii. Density of vessel traffic including commercial, Federal, and recreational.
 - viii. Other marine activity or trends of waterway use.
 - ix. Location of the obstruction with respect to existing aids to navigation.
 - x. Prevailing and historical weather conditions.
 - xi. Length of time the obstruction has been in existence.
 - xii. History of vessel accidents involving obstruction.
- c. **Determine Lead Agency:** As part of the joint consultation and if a determination of a hazard to navigation is made, decide which agency shall act as lead agency for executing corrective action(s) and for contacting the owner, lessee, or operator, if one can be identified, of the obstruction to execute the corrective actions. See Paragraph 8.d, below.
- d. **Corrective Actions:** After considering the above factors in Paragraph 7.b., along with any other relevant factors, the lead agency will decide upon the appropriate corrective action(s) to reduce the danger (posed by the hazard) to navigation to an acceptable level.



(1) Options to consider in formulating appropriate corrective action(s):

- i.** No action.
- ii.** Broadcasting and publication of navigational safety information.
- iii.** Marking.
- iv.** Removal.
- v.** Charting.
- vi.** Redefinition of navigational area, channel fairway, anchorage, etc.
- vii.** Combination of the above.

(2) Field level units of both agencies shall periodically review the status of existing obstructions to determine the adequacy of corrective action(s), to determine if a resurvey of the obstruction's location is necessary, to revise appropriate records, and to update public notification records. Periodic review shall be at least once per year but may be more frequently based on local conditions and risk associated with the obstruction.

8. DECISION MAKING GUIDANCE:

- a.** Personal contacts between agency field units should be established to facilitate decision-making.
- b.** Decisions should be made at the field unit level when possible in order to maintain timely response.
- c.** Decisions concerning corrective actions shall be supported by records appropriate to the specific case.

d. Lead Agency Determination:

(1) USACE:

- i.** The owner, lessee, or operator is responsible for the removal of the sunken vessel. When no pollution is involved, USACE shall be the lead agency for dealing with parties responsible for the removal of the sunken vessel. USACE will be the lead agency if federal removal of the sunken vessel is warranted. Typically, USACE will use its discretionary authority to remove sunken vessels that are located in a federally maintained navigable channel and are determined to be a hazard to navigation under 33 C.F.R. § 245.20.
- ii.** USACE is the lead agency to effect the removal of other obstructions by responsible parties in navigable waters. If a responsible party is not available, the USACE will evaluate factors supporting removal in conjunction with general authorities and any authorities applicable to the specific geographic location of the obstruction to determine whether USACE removal is feasible.

(2) USCG:



- i. The Coast Guard shall be lead for marking obstructions, should the USCG determine marking is required, and may have authority to remove obstructions in scenarios not addressed within the scope of this MOU.

(3) Change of Lead Agency Determination:

- i. The lead agency for resolving an obstruction to navigation may change after consultation between the agencies.
- e. **Broadcasting and publication of navigational safety information:** The USCG has authority to disseminate and maintain navigational safety information pertaining to obstructions and is the lead agency responsible for this type of information. This mission is complemented by related services offered and required to be provided by other sources, including the USACE. Each agency's field units will immediately notify their counterpart of any reported obstructions and will maintain close coordination to ensure that navigational safety information is disseminated in a timely and effective manner. Free exchange of information related to obstructions, including owner's name and address, will be made between agencies, subject to the requirements of the Privacy Act, 5 U.S.C. § 522a.
 - f. **Marking:** It shall be the responsibility of the owner, lessee, or operator to mark an obstruction to navigation. In the event that the owner, lessee, or operator, cannot be identified, refuses to mark the obstruction, inadequately marks the obstruction, or is otherwise unable to properly mark it, the USCG has authority to mark obstructions to navigation. When necessary, the USACE, as the lead agency, may request for an obstruction to be marked by the USCG and may assist in locating and marking obstructions.
 - g. **Removal:** If a determination is made that removal is the appropriate course of action, but the lead agency can not complete the removal action under its authority or funding, every effort shall be made to coordinate the removal process between agencies and/or with state and local officials.
 - h. **Conflicts over Corrective Actions:** Conflicts regarding actions taken under this MOU should be resolved at the field unit level. Conflicts that cannot be resolved shall be forwarded to the next level in each agency's Chain of Command for resolution. The USCG District Commander and USACE Division Commander will document the area(s) of conflict and present them to each other for consideration at least 7 days before forwarding of the issue to higher authority. If resolution cannot be achieved, the conflict shall be forwarded to the next higher level in the each agency's Chain of Command where a similar exchange of reviews shall be made in the same timeframe. Paragraph 9 delineates each agency's Chain of Command for the purposes of this MOU.
- 9. CHAIN-OF-COMMAND RELATIONSHIPS FOR RESOLUTION OF DIFFERENCES:** The listed chain-of-command relationships are applicable to most regions but where differences apply, the appropriate chain-of-command alignment will be used by each agency.
- a. Sector Commander, USCG Sector / District Commander, USACE District.



- b. District Commander, USCG District / Division Commander, USACE Division.
- c. Director, Marine Transportation Systems, USCG HQ / Chief, Operations and Regulatory, HQUSACE.
- d. Assistant Commandant for Prevention Policy, USCG HQ / Deputy Commanding General for Civil and Emergency Operations, HQUSACE.

10. AMENDMENT, DURATION, AND TERMINATION:

- a. This MOU may be modified or amended upon the mutual written consent of the signatories to this MOU or their designees.
- b. This MOU as modified with the mutual written consent of both parties will remain in effect for as long as it continues to serve the purpose and objectives defined herein.
- c. Either agency may terminate this MOU six months after giving formal written notice of intent to terminate.

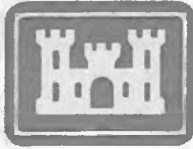
11. REPORTING AND DOCUMENTATION: Not applicable.

12. OTHER PROVISIONS:

- a. All activities conducted pursuant to this memorandum are subject to, and will be carried out in compliance with, all applicable laws, regulations, and other legal requirements. Nothing in this MOU is intended to diminish, modify, conflict with, or otherwise affect statutory or regulatory authorities, the directives of the USCG, the Department of Homeland Security, the USACE, the Department of the Army or the Department of Defense. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.
- b. This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes or is intended to obligate the Agencies to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value. Subject to the availability of funding, each Participant intends to assume responsibility for its respective costs arising from any activity related to this MOU.
- c. Information shared under this MOU may be subject to the Privacy Act, 5 U.S.C. § 522a. Each agency should refer to their appropriate policy or their servicing legal office for guidance on how the Privacy Act applies to sharing information on individuals.
- d. This MOU is strictly for internal management purposes for each of the parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of any of the Agencies. This MOU shall not be construed to provide a private right or cause of action for or by any person or entity.

13. EFFECTIVE DATE: This MOU is effective 120 days after execution by the Commandant, USCG, and the Commanding General, USACE.

14. POINTS OF CONTACT:



a. USCG
Director, Marine Transportation Systems
U.S. Coast Guard Headquarters (CG-5PW)
2100 Second Street, SW Washington, DC 20593-7580
202-372-1504

b. USACE
Chief, Operations and Regulatory Community of Practice
United States Army Corps of Engineers
441 G. Street, NW Washington, DC 20314-1000
202-761-1983

SIGNED:

**FOR THE UNITED STATES
COAST GUARD:**

Date: 5 Oct 2012

Peter V. Neffenger
Vice Admiral, U.S. Coast Guard
Deputy Commandant for Operations

**FOR THE UNITED STATES
ARMY CORPS OF ENGINEERS:**

Date: 5 Oct 2012

Michael J. Walsh
Major General, USA
Deputy Commanding General
for Civil and Emergency Operations