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Re: State Abandoned Vessel Laws (MASGP 09-008-11)

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Dear Sarah,

Please find attached the summaries of state laws and regulations addressing abandoned vessels as requested in your May 2009 Advisory Request. The attached information is intended as advisory research only and does not constitute legal representation of the NOAA Marine Debris Program or its constituents. It represents our interpretations of the relevant laws and regulations.

In preparation for an upcoming abandoned vessel workshop, the NOAA Marine Debris Program asked the Law Center to compile information on various aspects of the abandoned vessel programs in the thirty coastal states. In particular, information was sought on the definitions of abandoned vessel, designation processes, removal requirements, funding sources, disposal requirements or guidelines, and prioritization schemes.

This report was prepared using traditional legal research methods. For each state, state laws and regulations were searched using Westlaw, an online legal database, for any provisions addressing abandoned, derelict, or adrift vessels. Web searches were also conducted to provide additional information on abandoned vessels programs. Upon completing a draft summary, the Law Center contacted the lead state agency for abandoned vessels to obtain feedback on our summary to verify results. Feedback was received from all but nine states (Georgia, Illinois, Louisiana, Massachusetts, Oregon, Pennsylvania, Rhode Island, Texas, and Wisconsin).

I look forward to presenting this research at your upcoming workshop entitled "State-level Responses to Abandoned and Derelict Vessels" in Miami, September 15-17, 2009. I anticipate that additional information will arise about these state programs during the workshop and the report to be updated accordingly.

Sincerely,

*Stephanie E. Showalter*

Stephanie Showalter

Director, National Sea Grant Law Center

# STATE LAWS ADDRESSING ABANDONED AND DERELICT VESSELS

COMPILED BY NATIONAL SEA GRANT LAW CENTER

AUGUST 2009

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## ALABAMA

### Definition of a Vessel

**Vessel:** Every description of watercraft, other than a seaplane, capable of being used as a means of transportation on the water, but the term does not include vessels 12 feet in length or less when used solely on farm ponds of less than 50 acres in size. (ALA. CODE § 33-5-3(1)).

### Definition of a Derelict/Abandoned Vessel

Alabama does not have an explicit definition of derelict or abandoned vessel.

### Formal State Program For Abandoned Vessels

Alabama does not have a formal state program addressing abandoned vessels.

In March 1998, House Bill 917 was introduced in the Alabama Legislature to establish an abandoned vessel program, but it did not pass. According to the bill's synopsis it would have provided for:

The storage and disposition of an abandoned vessel and the civil procedure rights of the owner and the finder of the vessel including personal watercraft;

Notification and publication of the known data relating to the vessel to ascertain the identity of the owner and rights of parties with legal interest in the vessel;

Responsibilities and powers of the Alabama Criminal Justice Information Center and the Department of Conservation and Natural Resources;

The creation of and satisfaction of liens in the same manner as for abandoned motor vehicles; and the foreclosure or public sale of abandoned vessels and the disposition of excess proceeds in the same manner as for abandoned motor vehicles.

The bill also would have provided for a peace officer or law enforcement agency to remove an unattended vessel and the circumstances and duties thereunder and the issuance of a certificate of title by the Department of Conservation and Natural Resources.

The text of HB 917 is available at

<http://www.legislature.state.al.us/searchableinstruments/1998%20Regular%20Session/Bills/HB917.htm> .

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

Alabama law requires vessel owners to notify the Department of Conservation and Natural Resources within 15 days if the vessel is destroyed or abandoned. (*Id.* § 33-5-16(a)).

### Differences Between Commercial and Recreational Vessel Treatment

None.

### Vessel Size Requirements or Limits

None.

### Removal Requirements

Although Alabama does not have an abandoned vessel law, the state's salvage laws provide that any person may take up and secure "all property adrift." (*Id.* § 35-13-1).

Within 2 days of securing the property, the person must present the property to a district court for an official appraisal and description of the property. (*Id.* § 35-13-2).

If the appraised value of the property is over \$30, the taker must, within 10 days of the appraisal, give notice once a week for three successive weeks in a newspaper published nearest to the place where the property was taken up. (*Id.* § 35-13-3(a)).

- The notice must state the name of the taker; the time and place; a description of the property, with its marks, and the name of the owner, if known; its appraised value; and the location where the property is secured or deposited.

If the property is worth less than \$30.00, notice must be given within 5 days at the next steamboat landing, if the property was taken up on a navigable stream; otherwise, at the nearest public place. (*Id.* § 35-15-3(b)).

The owner of the property may, upon notifying the taker or person in possession and proving ownership to the satisfaction of the court, obtain an order from the court to restore such property on the payment of the legal costs and other charges. (*Id.* § 35-13-4).

The owner may prove his property, if appraised at less than \$30.00, within 3 months. If appraised between \$30.00 and \$100.00, the owner has 6 months. If the property is worth more than \$100.00, the owner has a year after the appraisal to prove his ownership. (*Id.* § 35-13-7).

- A failure to prove ownership vests ownership rights in the taker.

The taker of the property is entitled to compensation for his efforts as follows:

For property worth less than \$30.00, 25% of the appraised value;  
For property worth between \$30.00 and \$100.00, 20%;  
For property worth between \$100.00 and \$500.00, 15%;  
For property worth between \$500.00 and \$1,000.00, 10%; and  
For property worth more than \$1,000.00, 5%. (*Id.* § 35-13-5(a)).

The taker is also entitled to the court fees paid by him; the expenses of the advertisement, if published in a newspaper, and reasonable compensation for the keeping, if necessary to preserve the property from loss or injury. (*Id.* § 35-13-5(b)).

If the taker or person in possession of the property fails to return it to the owner on the order of the district court and payment of all costs and expenses, the owner may recover the property from the taker or person in possession. (*Id.* § 35-13-8).

The person failing to abide by a court order, forfeits double the appraised value of the property to the owner bringing the recovery action.

If a person conceals, destroys, injures, obliterates or defaces any mark, disposes of, or carries beyond the state any property taken up adrift before the expiration of the time periods mentioned above for the owner to prove his property, the taker is liable to the owner for the injury sustained. (*Id.* § 35-13-9)).

Funding Sources

Because there is no formal program in Alabama, there is no dedicated funding source.

Lead State Agency

N/A

Insurance Requirements for Vessels

Boat insurance is not required in Alabama.

Disposal Requirements/Guidelines

None.

Specific Location Factors or Limitations

Port authorities have the authority to order a derelict vessel to be removed from a state port.

Any owner or agent in control of any vessel that is anchored, moored, or made fast to the shore when the same is in bad repair, liable to sink, liable to pollute adjacent water, determined to be a substantial threat to pollute adjacent water, or deemed to be a derelict vessel, or in violation of any law or regulation, who fails to remove it from the harbor to a designated place when directed to do so by an accredited agent of the port authority, shall be guilty of a Class A misdemeanor and shall be subject to a fine not exceeding \$5,000 or 1 year in prison. (*Id.* § 33-1-33).

The offender is guilty of a new and similar offense and subject to the same penalty for each 48 hours that elapses after the order to remove the vessel from the harbor or seaport is served.

Any fines so collected shall be paid to the port authority and credited to the port's operating fund.

Prioritization Scheme

None.

## ALASKA

### Definition of a Vessel

**Vessel:** 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. (ALASKA STAT. § 30.30.170(2)).

### Definition of a Derelict/Abandoned Vessel

Alaska distinguishes between derelict and abandoned vessels.

**Derelict Vessel:** Pursuant to ALASKA STAT. § 30.30.090, a derelict vessel is one that has been left unattended for a continuous period of more than 24 hours and

Is sunk or in immediate danger of sinking, is obstructing a waterway, or is endangering life or property; or

Has been moored or otherwise left in the water of the state or on public property contrary to law, or regulations adopted by the Alaska Department of Transportation and Public Facilities (Department), or the vessel has been left on private property without authorization of the owner or occupant of the property and

- 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 U.S. Coast Guard;
- The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
- 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
- The vessel registration records of a state department and the marine document records of the U.S. Coast Guard contain no record that the vessel ever has been registered or documented and the owner's name or address cannot be determined.

For boats located in *state harbor facilities*, regulations of the Department define derelict as “any boat berthed or otherwise located within the boundaries of any state harbor facility which has been or gives the appearance of being forsaken, abandoned, deserted or cast away, or which in the opinion of the Commissioner [of the Department] is unsound, unseaworthy or unfit for its trade or occupation or which by any substantial evidence of neglect may be considered abandoned.” (ALASKA ADMIN. CODE tit. 17, § 80.110(3)).

State harbor facility is defined as “any float, grid, dock, launching ramp, approach, piling, dolphin, buoy, breakwater, dredged basin or channel, navigation aid, and appurtenances constructed or operated by the State of Alaska, including an area extending a reasonable distance from each of these structures to permit unobstructed maneuvering and safe navigation.” (*Id.* § 80.110(4)).

**Abandoned Vessel:** 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. (ALASKA STAT. § 30.30.020).

This definition does not include vessels left unattended for more than 30 days in a location where

- It is customary, 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;
- Climatic conditions make use of the vessel impracticable, or
- Applicable provisions of law preclude use of the vessel during that period of time. (*Id.* § 30.30.030).

#### Formal State Program For Abandoned Vessels

There is no formal state program in Alaska addressing AbVs, but the state has enacted the Abandoned and Derelict Vessels Act. (*See* ALASKA STAT. §§ 30.30.010 - 30.30.180.)

#### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation process in Alaska. A vessel is considered abandoned or derelict if it meets the definitional requirements outlined above.

In addition, it is unlawful for a person to store or leave a vessel in a wrecked, junked, or substantially dismantled condition or abandoned upon any public water or at a port or harbor of the state without the consent of the agency having jurisdiction of the water, port, or harbor, or docked at any private property without the consent of the owner of the property. (*Id.* § 30-30-010(a)).

A person who violates this section 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 both. (*Id.* § 30-30-010(d)).

#### Differences Between Commercial and Recreational Vessel Treatment

None found in the statutes.

#### Vessel Size Requirements or Limits

None found in the statutes.

#### Removal Requirements

#### **Derelict Vessels**

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. (*Id.* § 30-30-100(b)).

Pursuant to § 30.30.010(a), upon taking custody of a derelict vessel, the Department shall concurrently

- Publish a notice of intended disposition once in a newspaper of general circulation;
- Post a notice of intended disposition on the vessel, when possible; and
- Serve a duplicate of the notice of intended disposition by certified mail, with a return receipt, on
  - 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 U.S. Coast Guard; and
  - 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 U.S. Coast Guard.

### **Abandoned Vessels**

An abandoned vessel may be taken into custody by the Department or a peace officer. (*Id.* § 30.30.020).

On taking custody of an abandoned vessel, a written notice must be immediately 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. (*Id.* § 30.30.040).

- 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.

### Funding Sources

Because there is no formal program in Alaska, there is no dedicated funding source. The Department may recover some costs through the proceeds from the sale of derelict and abandoned vessels at public auction.

### Lead State Agency

Alaska Department of Transportation and Public Facilities.

### Insurance Requirements for Vessels

Boat insurance is not required in Alaska.

### Disposal Requirements/Guidelines

Although Alaska law allows derelict and abandoned vessels to be sold at public auction, the state does not have policies governing the actual disposal of the vessel.

#### **Derelict Vessels**

If a derelict vessel taken into custody by the Department or a peace officer is not repossessed within 20 days after the publication or mailing of the notice required by § 30.30.100(a), whichever occurs later, the vessel may be disposed of by negotiated sale. (*Id.* § 30.30.100(b)).

If two or more prospective purchasers indicate an interest in purchasing the vessel, the vessel must be sold at public auction to the highest bidder in the manner prescribed under § 30.30.050 (*see below*).

If no prospective purchaser indicates a desire to purchase the derelict vessel, the vessel may be disposed of as junk, donated to a governmental agency, or destroyed. (*Id.* § 30.30.100(c)).

#### **Abandoned Vessels**

If an AbV taken into custody 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. (*Id.* § 30.30.050).

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.

A person having an interest in an AbV may take possession of it before the date of the public auction upon payment to the Department of all port or harbor use fees, towing, handling, storage, appraisal, advertising, and any other expenses incurred by the Department in connection with the vessel. (*Id.* § 30.30.060).

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 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.

A public auction is not required when the appraised value of an AbV, as determined by an independent appraiser, is less than \$100. (*Id.* § 30.30.070).

Upon that determination and after public advertisement has been made once in a newspaper of general circulation, the Department may sell the vessel by negotiation, dispose of it as junk, donate the vessel to a governmental agency, or destroy it.

Specific Location Factors or Limitations

The Department and peace officers may only remove *derelict vessels* from *public waters*. (*Id.* § 30-30.010(b)).

If 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. (*Id.* § 30.30.110).

**State Harbor Facilities**

The Department has issued regulations governing derelict and abandoned vessels in state harbor facilities.

Boats in any state harbor facility are considered *derelict* if:

- Maintained in such manner as to make them liable to sinking; or
- Maintained in a manner to constitute a fire hazard to other boats or otherwise damage the harbor facilities. (ALASKA ADMIN. CODE tit. 17, § 80.070).

Failure of any boat owner, master, or managing agent to pay designated berthing fees shall be presumed to constitute *abandonment*.

Sunken boats in state harbor facilities are considered *public nuisances* and subject to removal from the state harbor facility without liability on the State of Alaska for any damage done by virtue of the removal. (*Id.* § 80.070).

Under ALASKA ADMIN. CODE tit. 17, § 80.080, any boat in a state harbor facility which is derelict, abandoned, or declared to be a public nuisance may be impounded, removed, sold, or otherwise disposed of as provided below:

Immediately upon determination that a boat is derelict or a public nuisance, the Department shall notify the owner, master, or managing agent of the boat, at his last known address, of the intent to impound, remove, sell or otherwise dispose of the boat;

Any boat impounded or removed shall be subject to and liable for storage charge of \$20 per month and costs incurred by reason of the impounding or removal;

Any boat impounded or removed must be held by the Department for a period of not less than 30 days after which time the Department may destroy, sell, or otherwise dispose of the boat.

- Proceeds from sale of the boat shall be first applied to the costs of conducting the sale, impounding, removal, berthing, and service fees accrued, and the balance held in trust for the owner to claim. If not claimed within two years, the balance is deposited in the state's general fund.

Prioritization Scheme

None.

## CALIFORNIA

### Definition of a Vessel

**Vessel:** Ships of all kinds, steamboats, steamships, canal boats, barges, sailing vessels, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. (CAL. HARB. & NAV. CODE § 21).

### Definition of an Derelict/Abandoned Vessel

California law does not explicitly define “abandoned vessel.” However, “any hulk, derelict, wreck, or parts of any ship, vessel, or other watercraft sunk, beached, or allowed to remain in an unseaworthy or dilapidated condition upon publicly owned submerged lands, salt marsh, or tidelands within the corporate limits of any municipal corporation or other public corporation or entity having jurisdiction or control over those lands, without its consent expressed by resolution of its legislative body, for a period longer than 30 days without a watchman or other person being maintained upon or near and in charge of the property, is abandoned property.” (*Id.* § 522(a)).

### Formal State Program for Abandoned Vessels

The California legislature created the Abandoned Watercraft Abatement Fund Grant Program (AWAF) to address abandoned vessels (AbV). The California State Department of Boating and Waterways (DBAW) administers this grant program and makes grant monies available to local agencies for reimbursement for the removal of AbV from waterways that the grantee has jurisdiction over. DBAW requires a 10% matching contribution. The AWAF does not provide reimbursement for commercial vessel removal.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation process in California. It is unlawful for any person to abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property, except for urgent and immediate concern for the safety of those aboard a vessel. (*Id.* § 525(a)).

Such abandonment is prima facie evidence that the last registered owner of record, not having notified the appropriate registration or documenting agency of any relinquishment of title or interest therein, is responsible for the abandonment and is thereby liable for the cost of removal and disposition of the vessel. (*Id.* § 525(b)).

The State Lands Commission and law enforcement personnel are authorized to remove AbVs.

### Difference between Commercial and Recreational Vessel Treatment

The removal of commercial vessels is not reimbursable. The AWAF grants mentioned above may not be utilized for abatement, removal, storage, or disposal of commercial vessels.

For recreational vessels, the AWAF grant covers average costs to remove, store and/or dispose of abandoned vessels and other navigational hazards. Extra consideration is given to applicant agencies

that are proactive in keeping abandoned vessels off state waters and maintain a navigational hazard abatement plan.

#### Vessel Size Requirements or Limits

None. Whether an abandoned vessel of a particular size will be removed is determined by the local agency that has the vessel in their jurisdictional waters.

#### Removal Requirements

Any peace officer, any employee or officer of the State Lands Commission designated by the State Lands Commission, or any lifeguard or marine safety officer employed by a county, city, or district while engaged in the performance of official duties, may remove, and, if necessary, store a vessel removed from a public waterway:

When the vessel is left unattended and is moored, docked, beached, or made fast to land in a position that obstructs the normal movement of traffic or in a condition that creates a hazard to other vessels using the waterway, to public safety, or to the property of another;

When the vessel interferes with, or otherwise poses a danger to, navigation or to the public health, safety, or welfare;

When the vessel poses a threat to adjacent wetlands, levies, sensitive habitat, any protected wildlife species, or water quality; or

When a vessel is found or operated upon a waterway with a registration expiration date in excess of one year before the date on which it is found or operated on the waterway. (*Id.* § 523).

#### Funding Sources

Violation of these Code provisions is an infraction and shall be punished by a fine of not less than \$500, nor more than \$3,000. In addition, the court may order the defendant to pay to the agency that removes and disposes of the vessel the actual costs incurred by the agency for that removal and disposition. (*Id.* § 525(c)).

80% of the moneys are deposited in AWAFF. These grants are not to be utilized for abatement, removal, storage, or disposal of commercial vessels. (*Id.* § 525(d)(1)(A)).

Grants from the AWAFF must be matched by not less than a 10% contribution from the local agency receiving the grant. (*Id.* § 527).

The Legislature has authority under § 527 to appropriate each fiscal year from the Harbors and Watercraft Revolving Fund to the AWAFF a sum not to exceed \$1 million. Pursuant to § 525(d)(1)(A) moneys in the AWAFF shall be used exclusively, upon appropriation by the Legislature, for grants to be awarded by the DBAW to local agencies for abandoned vessel removal.

#### Lead State Agency(s)

California Department of Boating and Waterways and the Boating and Waterways Commission

Insurance Requirements for Vessels (Recreational and Commercial)

Boater's insurance is not required in California.

Disposal Requirements/Guidelines

Any wrecked property that is an unseaworthy derelict or hulk, or abandoned property as described in CAL. HARB. & NAV. CODE § 522, or property removed from a navigable waterway pursuant to §§ 523 or 524 that is an unseaworthy derelict or hulk, may be sold or otherwise disposed of by the public agency that removed or caused the removal of the property, subject to the following conditions:

The property has been appraised by disinterested persons, and has an estimated value of less than two thousand dollars (\$2,000);

There is no discernable registration, license, hull identification number, or other identifying insignia on the property, or the Department of Motor Vehicles is unable to produce any record of the registered or legal owners or lienholders;

Not less than 72 hours before the property was removed, the peace officer or authorized public employee securely attached to the property a distinctive notice stating that the property would be removed by the public agency; and

Within 48 hours after the removal the public agency that removed or caused the removal of the property sent notice of the removal to the registered and legal owners. (*Id.* § 526)

The sheriff of any county in which any wrecked property is found, when no person entitled to possession appears, shall take possession of it in the name of the State. The sheriff must then have its value appraised by disinterested persons, and keep it in some safe place to answer the owner's claims.

If wrecked property is in a perishable state, the sheriff shall apply to the judge of the superior court, upon a verified petition, for an order authorizing the sheriff to sell it. If the judge is satisfied that a sale of the property would be beneficial to the persons interested, he or she shall make the order applied for, and the property shall then be sold at public auction, as specified in the order. The proceeds, deducting the expenses of salvage, storage, and sale as settled and allowed by the judge, shall be transmitted to the Treasurer for deposit in the general fund.

If, within 90 days after wrecked property is found, any person claims the property, or its proceeds, and establishes his or her claim by evidence satisfactory to the judge of the superior court, the judge shall make an order directing the officer in whose possession the property or its proceeds may be, to deliver it to the claimant, upon the payment of a reasonable salvage and the necessary expenses of preservation. (*Id.* §§ 512-514)

If, within 60 days after saving wrecked property, no claimant of the property appears, or, if within 60 days after a claim, the salvage and expenses are not paid, or a suit for the recovery of the property is not commenced, the officer who has custody of the property may sell it at public auction and transmit the proceeds of the sale, after deducting salvage, storage, property tax liens, other liens, and other expenses, to the Treasurer for deposit in the General Fund.

Public notice of every sale of wrecked property under the CAL. HARB. & NAV. CODE Ch. 3 shall be published by the officer making the sale for at least two weeks in succession in one or more newspapers printed in the county, or if none is printed in the county, then by written or printed notices posted in three of the most public places in the county at least fifteen days previous to the sale. Every notice shall state the time and place of the sale and contain a particular description of the property to be sold.

Every sheriff who possesses any wrecked property shall publish, for at least two weeks in succession, in one or more of the newspapers printed in this State, a notice directed to all persons interested. The notice shall contain a minute description of the property, and of every bale, box, case, piece, or parcel, and the marks, brands, letters and figures on each. It shall state:

- Where the property then is and its actual condition;
- The name, if known, of the vessel from which it came;
- The names of its master and supercargo;
- The place where the vessel then is, and its actual condition. (*Id.* §§ 518-520).

In addition, local city health ordinances guide the disposal of AbV in California. In addition, the grantee must comply with the following AWAFF requirements:

- Adherence to California law regarding titles and liens in conjunction with each vessel, including provisions set forth in the Harbors and Navigation Code Chapter 3, Article 1 regarding wrecked and salvaged vessels;
- Submittal of complete and current Water Hazard Removal Lists (WHRL);
- Securing of any studies, permits, or authorizations associated with treatment, removal, storage, disposal, or any other handling of hazardous substances including but not limited to toxic waste, petroleum waste, asbestos, and like substances prior to the removal of any vessel; and
- Acceptance of responsibility for the proper and legal disposal or recycling of vessels, parts of any vessels, materials, fluids, petroleum products and associated chemicals.

#### Specific Location Factors or Limitations

In addition to the authority to remove AbV from public property, any peace officer may store any vessel removed from private property when the vessel is found on, or attached to, private property and a report has previously been made that the vessel has been stolen or a complaint has been filed and a warrant thereon issued charging that the vessel has been embezzled. (*Id.* § 524).

After a reasonable period of time, a peace officer may remove a vessel from private property if the vessel has been involved in, and left at, the scene of a boating accident and no owner is available to grant permission to remove the vessel. This does not authorize the removal of a vessel if the owner has been contacted and has refused to grant permission to remove the vessel. (*Id.* § 524).

#### Prioritization Scheme

Under the AWAFF, agencies apply for funding based on their need at the time of application. Once they are awarded the grant, the parties proceed thru a contract process (they get Board Approval, state legal review/approval, etc). Once that's all complete, they may begin their removal process. Work is reimbursed after removal, storage and disposal is complete.



## CONNECTICUT

### Definition of a Vessel

**Vessel:** Every description of watercraft, other than a seaplane on water, used or capable of being used as a means of transportation on water. (CONN. GEN. STAT. § 15-127).

### Definition of a Derelict/Abandoned Vessel

**Abandoned Vessel (no pre-standing commercial relationship):** It is unlawful for any person to abandon any vessel on the waters of the state or upon property other than his own without the consent of the owner. (*Id.* § 15-140c(a)).

A vessel is presumed to be an abandoned vessel if left unattended for more than 24 hours

- On private property without the consent of the landowner, or
- On Connecticut waters and not moored, anchored or made fast to the shore.

The last owner of record of a vessel at the time it was abandoned shall be presumed to be the person who abandoned it or caused its abandonment.

**Abandoned Vessel (pre-standing commercial relationship):** A vessel is considered to be abandoned if left at a business (that has agreed to provide some service such as maintenance, repair, storage, berthing, etc.) with fees unpaid. (*See generally, id.* §§ 49-55 – 49-59).

**Derelict Vessel:** A derelict vessel means any vessel that is broken or altered to such an extent that it will not keep afloat with ordinary care. (Personal communication, Eleanor C. Mariani, Director, DEP Boating Division, 10/8/09).

### Formal State Program For Abandoned Vessels

Connecticut does not have a formal AbV program. However, § 15-140c of the CONN. GEN. STAT. provides local police departments and the Connecticut Department of Environmental Protection (DEP) State Environmental Conservation Police with the authority to take AbVs into custody.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

**Abandoned Vessel (no pre-standing commercial relationship):** Self-implementing - any person or entity may declare a vessel meeting the definition of “abandoned” as such.

In almost all cases, it is left up to the aggrieved landowner or business to see the abandoned boat process through while they retain custody of the vessel. However, the law does provide that any officer authorized to enforce the state’s boating laws, upon discovery of any vessel apparently abandoned, whether situated on or out of the waters of the state, may take such vessel into his custody and place the vessel into storage in a suitable place. (CONN. GEN. STAT. § 15-140c(b)).

No liability may attach to such officer for any damages to such vessel while in his custody.

All charges incurred by the officer in the performance of such duty shall be a lien upon such vessel.  
(*Id.*)

**Abandoned Vessel (pre-standing commercial relationship):** The aggrieved business will file a vessel lien with the Secretary of the State after non-payment is established.

**Derelict Vessel:** Only a duly authorized harbormaster can declare a vessel as “Derelict.” (*Id.* § 15-11a). A harbormaster may direct that a derelict vessel be taken into custody, however, as a practical matter, there is resistance to accepting custody of the vessel because there are generally no funds available for derelict vessel removal and there is no guarantee that such expenses can be recovered. (Personal communication, Eleanor C. Mariani, Director, DEP Boating Division, 10/8/09).

Differences Between Commercial and Recreational Vessel Treatment

None.

Vessel Size Requirements or Limits

None.

Removal Requirements

None.

Funding Sources

There is no dedicated funding source in Connecticut for the removal of AbVs. Officers removing and individuals storing AbVs are entitled to reimbursement of costs incurred, which can be obtained from the owner through the operation of a maritime lien or sale of the vessel.

Lead State Agency

Connecticut Department of Environmental Protection (abandonment, no pre-standing commercial relationship)

Connecticut Secretary of the State (abandonment and vessel lien, pre-standing commercial arrangement)

Connecticut Department of Transportation (derelict vessel)

Insurance Requirements for Vessels

Boat insurance is not required by law in Connecticut.

Disposal Requirements/Guidelines

None.

### Specific Location Factors or Limitations

**Abandoned Vessel (no-pre-standing commercial relationship):** The owner or keeper of any marina or other place where such vessel is stored may acquire a lien upon the vessel for his storage charges.

If such vessel has been stored for at least 60 days, such owner or keeper may sell the vessel for the storage charges owed thereon, provided:

- A notice of intent to sell is sent to the Commissioner of Environmental Protection, the Commissioner of Motor Vehicles, Commissioner of Transportation, and the owner of such vessel, if known, 5 days before the sale of such vessel.
- If the owner is unknown, such sale shall be advertised in a newspaper published or having a circulation in the town where such marina or other place is located three times, commencing at least 5 days before the sale.

The proceeds of such sale, after deducting the amount due to the marina owner and all expenses of the officer, shall be paid to the owner of the vessel or his legal representatives, if claimed by him at any time within one year from the date of such sale.

- If such balance is not claimed within said period, it reverts to the state.

**Abandoned Vessel (pre-standing commercial relationship):** The aggrieved business files a lien on the vessel with the Connecticut Secretary of the State, and makes certain notifications. After 60 days, if the lien has not been dissolved, the aggrieved business may sell the vessel at public auction. Proceeds in excess of the lien amount are distributed to other lien holders and then the owner. If such proceeds are not claimed by the owner within a year, the proceeds escheat to the state. (CONN. GEN. STAT. §§ 49-55 – 49-59).

**Derelict Vessel:** Once a harbormaster declares a vessel “derelict” the owner is notified and a notification is affixed to the vessel. If the vessel is not removed within 24 hours, the vessel may be taken into custody and removed. The vessel may be disposed of after 15 days if the market value does not exceed \$2,000, otherwise the vessel may be sold at auction after 90 days. The owner of the vessel is liable for any fees or charges incurred in the removal of the vessel even of those fees or charges exceed the proceeds recovered at sale. (*Id.* §15-11a).

### Prioritization Scheme

None identified in the statutes or regulations.

## DELAWARE

### Definition of a Vessel

**Vessel:** Every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. (DEL. CODE ANN. tit. 23, § 1303(d)(3)).

### Definition of a Derelict/Abandoned Vessel

DEL. CODE ANN. tit. 23, § 1303(d)(1) defines “abandoned vessel” as:

A vessel that has been left illegally or has remained without permission for more than 30 days on public property, including public marinas, public docks, and public boatyards; or

A vessel that has been found adrift or unattended in or upon the public waters or public subaqueous land of the State, and is found in a condition of disrepair that constitutes a hazard or obstruction to the use of public waters or subaqueous land of the State or that presents a potential or actual health or environment hazard.

Vessels left unattended at any seawall or other mooring facility in excess of 48 hours without contacting the Division of Fish and Wildlife (within the Department of Natural Resources and Environmental Control) or a Fish and Wildlife Agent are also considered abandoned. (7-3000-3100 DEL. CODE REGS. § 10.2.5).

### Formal State Program For Abandoned Vessels

Delaware has no formal program to address AbV. Three provisions of the Delaware Code (§§ 1303-1305) provide the Department of Natural Resources and Environmental Control (Department) with removal authority.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation procedure in Delaware. A vessel is considered abandoned and subject to removal by the Department if it

Has been left illegally or has remained without permission for more than 30 days on public property, including public marinas, public docks, and public boatyards;

Has been found adrift or unattended in or upon the public waters or public subaqueous land of the State, and is found in a condition of disrepair that constitutes a hazard or obstruction to the use of public waters or subaqueous land of the State or that presents a potential or actual health or environment hazard; or

Has been left unattended at any seawall or other mooring facility in excess of 48 hours without contacting the proper authorities.

A person who abandons a vessel or property relating to a vessel on public or private property for more than 30 days or who violates any other provision of § 1303 or § 1304 is subject to a civil penalty of not less than \$100 nor more than \$500 for each offense. (DEL. CODE ANN. tit. 23, § 1305).

#### Differences Between Commercial and Recreational Vessel Treatment

None.

#### Vessel Size Requirements or Limits

None.

#### Removal Requirements

##### **Public Property**

The Department may seize, remove, transport, preserve, store, and dispose of any abandoned vessel or property relating to a vessel located on public property. (*Id.* § 1303(e)).

The Department may use its own personnel, equipment, and facilities or use other persons, equipment, and facilities.

The Department may not be held liable for any damage which may occur during seizure, removal, transportation, preservation, storage, or disposition.

The Department may delegate to any local jurisdiction its authority to seize, remove, transport, preserve, store, and dispose of AbVs and related property. (*Id.* § 1303(g)).

Vessels left abandoned at any seawall or other mooring facility or found adrift shall be removed at the owner's expense. (7-3000-3100 DEL. CODE REGS. § 10.2.5)

##### **Private Property**

If the Department receives funding to provide such a service, the Department may remove vessels abandoned on private property upon the property owner's written request. (DEL. CODE ANN. tit. 23, § 1304(a)).

#### Funding Sources

Because there is no formal AbV program in Delaware, there is no dedicated funding source. When undertaken, funding for AbV removal comes from the DNREC, Division of Soil and Water Conservation, Shoreline and Waterway Management annual General Fund appropriation for dredging, macroalgae harvesting and channel marking. (E-mail from Charles Wilson, DNREC, to Chief James Graybeal, Delaware Fish and Wildlife Enforcement (July 29, 2009) (on file with NSGLC)). One-time funding was received in FY2008 to purchase a work barge and hydraulic excavator for abandon vessel and derelict structure removal activities. (*Id.*)

The Department is entitled to reimbursement for all expenses incurred in the enforcement of §§ 1303 and 1304. (*Id.* § 1305). The proceeds from any vessel or property sold at auction which remain after

any liens and any expenses incurred by the Department or by the person who turned the abandoned vessel over to the Department are paid must be placed in the General Fund. (*Id.* § 1303(c)).

Reimbursable expenses include all direct expenses associated with the seizure, removal, transportation, preservation, storage, and disposal of a vessel or property relating to a vessel.

#### Lead State Agency

Delaware Department of Natural Resources and Environmental Control.

#### Insurance Requirements for Vessels

Boater's insurance is not required in Delaware.

#### Disposal Requirements/Guidelines

If the person entitled to possession of a AbV in the custody of the Department cannot be located and fails to claim possession for a period of 6 months, the Secretary of the Department may dispose of the vessel or property at public sale at a place which is convenient and accessible to the public. (*Id.* § 1303(b)).

The time, place, and terms of the sale, together with a description of the vessel or property, must be published in one or more daily newspapers at least once each week for two successive weeks prior to the sale.

If the vessel or property is of a kind for which a certificate of title or registration has been or should have been issued by the Department, the Secretary shall cause notice by registered mail to be sent at least 10 days before the sale to the owner and lienholder, if any, shown on the records of the Department, or to the person entitled to possession of the vessel or property, if the person's address is known or if it can be ascertained by the exercise of reasonable diligence.

- If an address cannot be ascertained, notice is not required.

Notice is not required when an abandoned vessel or property relating to a vessel is removed in an emergency situation which creates an actual or potential hazard to navigation.

If an abandoned vessel or property relating to a vessel is in such a condition of disrepair that the Department cannot remove it intact, the Department may dispose of it in whatever manner is reasonable without providing the notice required under § 1303(b)(1). (*Id.* § 1303(f)).

#### Specific Location Factors or Limitations

The provisions of §§ 1303 and 1304 do not apply to archaeological resources, including shipwrecks embedded in or located on the State's subaqueous lands, which are regulated by the Department of State, Division of Historical and Cultural Affairs. (*Id.* § 1303(h)).

The Department may only remove vessels from private property if it receives funding from the Legislature to do so.

Prioritization Scheme

The Delaware Code contains no provisions for the prioritization of AbV removal. However, notice is not required when an abandoned vessel or property relating to a vessel is removed in an emergency situation which creates an actual or potential hazard to navigation. (*Id.* § 1303(b)(2)).

## FLORIDA

### Definition of a Vessel

“Vessel” is synonymous with boat as referenced in s. 1(b), Art. VII of the Florida Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (FLA. STAT. § 327.02).

### Definition of a Derelict/Abandoned Vessel

Florida uses the term “derelict.” A derelict vessel is any vessels that is left stored, or abandoned:

In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;

At any port in this state without the consent of the agency having jurisdiction thereof; or

Docked or grounded at or beached upon the property of another without the consent of the owner of the property. (*Id.* § 823.11).

Derelict vessels are also considered abandoned property. (*Id.* § 705.101(3)).

“Abandoned property” is defined as “all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner.”

### Formal State Program For Abandoned Vessels

Florida has a state program addressing abandoned vessels. The Florida Fish and Wildlife Conservation Commission (Commission) maintains a database of all abandoned or derelict vessels in Florida waters, coordinates for the removal of derelict vessels that pose a hazard to navigation or a threat to the environment, and provides grants to coastal local governments for the removal of derelict vessels from Florida waters.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel in the state of Florida. (*Id.* §§ 823.11(2), 376.15).

Any person, firm, or corporation violating Florida’s derelict vessel laws commits a misdemeanor of the first degree. (*Id.* § 823.11(4)).

- Conviction under this section does not bar the assessment and collection of the civil penalty for violation of § 376.15.

When the Commission identifies a derelict vessel, a notice is posted on the vessel and the owner contacted.

If the vessel constitutes a hazard to navigation, the Commission will notify the nearest U.S. Coast Guard station. If a pollution threat exists, the Commission will also notify the appropriate U.S. Coast Guard Marine Safety Office and the Florida Department of Environmental Protection's Bureau of Emergency Response.

The Commission uses every available means to identify the owner of a derelict vessel and compel the owner to remove it at his own expense. (See Florida Fish and Wildlife Conservation Commission, FAQs: Derelict Vessels, [http://myfwc.com/NEWSROOM/Resources/News\\_Resources\\_DerelictVessel.htm](http://myfwc.com/NEWSROOM/Resources/News_Resources_DerelictVessel.htm)).

A certified letter is mailed to the last known owner of an abandoned vessel which directs the owner to remove the vessel from public waters of the state within 30 days of receipt of the letter or provide proof of the legal transfer of the vessel's ownership. If the owner complies with the request, the matter shall be closed. If these efforts fail, the facts are reviewed to determine if criminal charges are warranted.

If the vessel meets the criteria in § 823.11 and all efforts have been expended to have the vessel removed from public waters by its owner, the Commission designates the vessel as a derelict vessel and marks it with the letters "DV" and the incident summary number assigned by the regional field office.

The marking of the vessel will be done in such a way that the vessel will be readily identified as a specific derelict vessel by a prudent mariner and/or a removal contractor.

#### Differences Between Commercial and Recreational Vessel Treatment

None.

#### Vessel Size Requirements or Limits

None.

#### Removal Requirements

##### **Public Property**

The owner of the vessel is responsible for removing it from public waters. If the owner refuses, he/she may face criminal charges and possible fines.

If the owner cannot be identified, the Commission and its officers and all law enforcement officers are authorized and empowered to remove or cause to be removed any abandoned or derelict vessel from public waters in any instance when it obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment. (*Id.* § 832.11(3)(a)).

Also, any law enforcement agency may remove a vessel if it is deemed to be a hazard to public safety or is considered to be abandoned property. (*See, id.* §§ 327.70(1) and 705.103)

Law enforcement officers are authorized to immediately take abandoned property into custody if it is located on public property and is of such a nature that can be easily removed. A reasonable attempt to ascertain the rightful owner or lienholder should be made by the officer. (*Id.* § 705.103(1)).

If the abandoned property cannot be easily removed, the officer must place a notice upon such property in substantially the following form:

- NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: (setting forth brief description) is unlawfully upon public property known as (setting forth brief description of location) and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: (setting forth the date of posting of notice), signed: (setting forth name, title, address, and telephone number of law enforcement officer). (*Id.* § 705.103(2)).

For abandoned vessels, the law enforcement agency is required to contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner and any person who has filed a lien on the vessel. (*Id.*)

- On receipt of this information, the law enforcement agency must mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any.

If, at the end of 5 days after posting the notice and mailing such notice, if required, the owner or any person interested in the abandoned vessel has not removed it from public property or shown reasonable cause for failure to do so, the law enforcement agency may:

- Retain it for its own use or for the use of by the state or local government,
- Trade it to another unit of local government or state agency,
- Donate it to a charitable organization,
- Sell it, or
- Notify the appropriate refuse removal service. (*Id.* § 705.103(2)(a)).

The owner of an abandoned vessel that does not remove it within the specified period provided in the notice, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal. (*Id.* § 705.103(4)).

- Upon final disposition of the property, the law enforcement officer shall notify the owner, if known, of the amount owed.
- Any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid. (*Id.* § 705.103(4)).

### **Private Property**

When a derelict vessel is docked or grounded at or beached upon private property without the consent of the owner of the property, the owner of the property may remove the vessel at the vessel owner's expense 60 days after compliance with the notice requirements specified in § 328.17(5) (*see below*) (*Id.* § 832.11(3)(b)).

The private property owner may not hinder reasonable efforts by the vessel owner or agent to remove the vessel.

Notice is presumed delivered when it is deposited with the U.S. Postal Service, certified, and properly addressed with prepaid postage.

- The notice shall include:
  - An itemized statement of the marina's claim, showing the sum due at the time of the notice and the date upon which the sum became due;
  - A description of the vessel;
  - A demand for payment;
  - A conspicuous statement that, unless the claim is paid within the time stated in the notice, the vessel will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place; and
  - The name, street address, and telephone number of the marina that the owner or lienholder may contact to respond to the notice. (*Id.* § 328.17(5)).

Derelict vessels found ashore can also be claimed by calling the local sheriff's office and filing a Found Property Claim.

If the owner does not claim the vessel within 90 days after the report is made, title to the vessel may be transferred to the finder using Florida's abandoned property laws. (*See id.* § 705.104(1)).

### Funding Sources

#### **Derelict Vessel Removal Grant Program**

The Derelict Vessel Removal Grant Program provides grants to local governments for the removal of derelict vessels from Florida waters. Funding for this program has been sporadic and it was not funded for FY10.

In the event monies are appropriated by the Legislature for the funding of the Derelict Vessel Removal Grant Program, the Commission's Division of Law Enforcement shall award said grants to local governments based on these criteria:

The degree to which the designated derelict vessels pose a threat to public health or safety, the environment, navigation or the aesthetic condition of the general vicinity within the jurisdiction of the grant applicant.

The total number of derelict vessels within the jurisdiction of the grant applicant.

The degree to which the designated derelict vessels will be used in the construction of permitted artificial reef sites.

The projected cost effectiveness of the grant applicant's proposed derelict vessel removal program.

The degree of commitment of the grant applicant to maintain coastal waters free of derelict vessels and its record for seeking legal action against those owners who abandon vessels in the waters of the state.

The timeliness and completeness of the grant application received from the applicant.

Only derelict vessels as defined in § 823.11(1) are eligible for removal with grant funds.

Derelict vessels must be designated and marked by a law enforcement officer as specified in § 327.70.

- Such designation and marking shall be considered made when the law enforcement officer completes a Derelict or Abandoned Vessel Report. This form may be obtained by contacting the Division of Law Enforcement.

### **Florida Boating Improvement Program**

In addition, the Florida Boating Improvement Program provides funding through competitive grants for boating access projects and other boating-related activities, such as derelict vessel removal on coastal and/or inland waters of Florida. Eligible program participants include county governments, municipalities and other governmental entities of the State of Florida.

#### Lead State Agency

Florida Fish and Wildlife Conservation Commission

#### Insurance Requirements for Vessels

Boat insurance is not required in Florida.

#### Disposal Requirements/Guidelines

Authorized disposal sites for derelict vessels shall be limited to permitted artificial reef sites and permitted landfill locations. The Division of Law Enforcement must approve any exceptions in writing. (FLA. ADMIN. CODE ANN. r. 68-1.003).

For vessels taken to local landfills, local city health ordinances guide disposal requirements. In addition, the grantee must comply with the following requirements:

Obtain any necessary permits from the Florida Department of Environmental Protection, the Commission, and the U.S. Army Corps of Engineers.

#### Specific Location Factors or Limitations

The Commission only has authority to remove derelict vessels from public waters. The Commission does not have jurisdiction over derelict vessels found on private property.

#### Prioritization Scheme

Derelict vessels that are public safety and navigational hazards are removed first. Derelict vessels that are environmental hazards are then removed. (FWC, *FAQs: Derelict Vessels*).

## GEORGIA

### Definition of a Vessel

**Vessel:** Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water and specifically includes, but is not limited to, inflatable rafts. (GA. CODE ANN. § 52-7-70(3)).

### Definition of a Derelict/Abandoned Vessel

Georgia uses the term “abandoned vessel.” Section 52-7-70(1) defines an abandoned vessel as a vessel:

Which has been left with a vessel dealer, repairman, or wrecker service for more than 30 days from

- The date agreed upon for pickup;
- The date the vessel was turned over to the dealer, repairman, or wrecker service, if no pickup time agreed upon; or
- The completion of necessary repairs;

Which is left unattended upon or in any public water or at any port in this state without the consent of the agency having jurisdiction or docked at any private property without the consent of the owner of such property for a period of at least 5 days and when it reasonably appears to a law enforcement officer that the individual who left such vessel unattended does not intend to return and remove such vessel;

Which has been lawfully towed onto the property of another at the request of a law enforcement officer and left there for a period of not less than 30 days without anyone making a claim;

Which has been lawfully towed onto the property of another at the request of a property owner on whose property the vessel was abandoned and left there for a period of not less than 30 days without the owner making a claim; or

Which has been left unattended on private property for a period of not less than 30 days without anyone making a claim.

### Formal State Program For Abandoned Vessels

In 2006, the Georgia Legislature appropriated funding for AbV removal efforts. The Georgia Department of Natural Resources’ (DNR) Sunken Vessels Project currently focuses on identifying and mapping abandoned and derelict vessels in an effort to alert boaters to potential hazards. The mapping will inform future removal efforts by local, state, and federal agencies. (See, Buck Bennet, *The Sunken Vessel Project*, <http://crd.dnr.state.ga.us/content/displaycontent.asp?txtDocument=1113>).

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation process in Georgia. A vessel is considered abandoned when it meets the above definitional requirements.

Local law enforcement agencies have the authority to remove abandoned vessels upon notification to DNR.

Differences Between Commercial and Recreational Vessel Treatment

None.

Vessel Size Requirements or Limits

None.

Removal Requirements

There are no provisions in the Georgia code governing how AbVs should be removed. There are a variety of notification provisions, however.

**Responsibilities of Law Enforcement Personnel**

Peace officers may remove a vessel to a garage or other place of safety, after notifying the DNR as detailed below, if they find the vessel left unattended in or upon public waters or property for a least 5 days and reasonably believe that the person who left the vessel does not intend to return and remove it. (GA. CODE ANN. § 52-7-72(a)).

If the unattended vessel poses a threat to public health or safety, the peace officer may immediately cause such vessel to be removed to a garage or other place of safety upon notifying DNR. (*Id.* § 52-7-72(b)).

Peace officers removing vessels under these provisions shall be liable for gross negligence only. (*Id.* § 52-7-72(c)).

Peace officers finding vessels under the above conditions must, within 72 hours of such finding, notify the DNR and the Georgia Crime Information Center (GCIC) of the description of the vessel, whether the vessel has been removed or not, and, if removed, the location where such vessel is being stored. The notification must also include the name and address of the last known registered owner of such vessel, if available on the GCIC Network. (*Id.* § 52-7-72(d)).

If the vessel is determined to be a stolen vessel, the local law enforcement officer or agency shall notify the GCIC and the owner, if known, of the location of such vessel within 72 hours after learning that the vessel is stolen.

If the vessel is removed and the name and address of the last known registered owner is obtained from the GCIC, the peace officer who causes the removal shall provide this information to the person removing such vessel within 3 calendar days of removal. If such information is not available, the peace officer should notify the removing party of that fact within 3 calendar days.

**Responsibilities of Private Citizens**

If a person removes an AbV from public waters or property at the request of a law enforcement officer or stores such vessel and the owner of the vessel is unknown, he must seek the identity of and address

of the last known registered owner of such vessel from the requesting law enforcement agency within 72 hours of removal. (*Id.* § 52-7-71(a)).

If the removed vessel is determined to be a stolen vessel, the local law enforcement officer or agency must notify the GCIC and the owner, if known, of the location of such vessel within 72 hours after receiving notice that such vessel is a stolen vessel. (*Id.* § 52-7-71(c)).

If a person removes a AbV from private property or waters at the request of the property owner or stores such vessel and the vessel's owner is unknown, he must notify in writing a local law enforcement agency of the location of the vessel, the vessel certificate of number, and the hull identification number, model, year, and make of the vessel, if known or if readily ascertainable, within 72 hours of the removal of such vessel and must seek from the local law enforcement agency the identity and address of the last known registered owner of such vessel and any information indicating that such vessel is a stolen vessel. (*Id.* § 52-7-71(b)).

If the vessel is determined to be a stolen vessel, the local law enforcement officer or agency shall notify the Georgia Crime Information Center and the owner, if known, of the location of such vessel within 72 hours after receiving notice that such vessel is a stolen vessel.

If the AbV removed under subsection (a) or (b) of § 52-70-71 is not a stolen vessel, a vessel being repaired by a repair facility, or a vessel being stored by an insurance company providing insurance to cover damages to the vessel, the person removing or storing the vessel must notify the owner, if known, within 7 calendar days of removal. (*Id.* § 52-70-71(d)).

Notification should be given by certified or registered mail or statutory overnight delivery and include the location of such vessel, the fees connected with removal and storage of such vessel, and the fact that such vessel will be deemed abandoned unless the owner redeems such vessel within 30 days of the date such vessel was removed.

If the owner fails to redeem the vessel, or if a vessel being repaired by a repair facility or being stored by an insurance company becomes abandoned, the person removing or storing such vessel must, within 7 calendar days of the day such vessel became an abandoned vessel, give notice in writing, by sworn statement, to the Department of Natural Resources and the Georgia Bureau of Investigation, stating

The vessel certificate of number,  
The hull identification number,  
The fact that such vessel is an abandoned vessel,  
The model, year, and make of the vessel, if known or if readily ascertainable,  
The date the vessel became an abandoned vessel,  
The date the vessel was removed and the present location of such vessel, and  
Requesting the name and address of all owners, lessors, lessees, security interest holders, and lienholders of such vessel. (*Id.* § 52-70-71(e)).

If a person removing or storing the vessel has knowledge of facts which reasonably indicate that the vessel is registered or titled in another state, he is required to check the vessel records of the other state in an attempt to ascertain the identity of the owner of the vessel. (*Id.*)

Upon ascertaining the owner of the AbV, the person removing or storing the vessel shall, within 5 calendar days, by certified or registered mail or statutory overnight delivery, notify the owner, lessors, lessees, security interest holders, and lienholders of the vessel of the location of such vessel and of the fact that such vessel is deemed abandoned and shall be disposed of if not redeemed. (*Id.* § 52-70-71(f)).

If the identity of the owner of such vessel cannot be ascertained, the person removing or storing such vessel must place an advertisement in a newspaper of general circulation in the county where such vessel was obtained or, if there is no newspaper in such county, shall post such advertisement at the county courthouse in such place where other public notices are posted. (*Id.* § 52-7-71(g)).

Such advertisement shall run in the newspaper once a week for two consecutive weeks or shall remain posted at the courthouse for two consecutive weeks.

The advertisement must contain a complete description of the vessel, its certificate of number and hull identification number, the location from where such vessel was initially removed, the present location of such vessel, and the fact that such vessel is deemed abandoned and shall be disposed of if not redeemed.

#### Funding Sources

In 2006, the Georgia Legislature appropriated funds for an abandoned vessel removal program. Unfortunately, in 2008 the DNR's \$180,000 budget was cut to zero (Lesley Conn, *Sunken Shrimp Boat adds to Festering Dilemma*, SAVANNAH (GA.) MORNING NEWS, Apr. 2, 2009). The Coastal Resources Division of DNR applied for funding to facilitate the removal of marine debris, including AbV, through the American Reinvestment and Recovery Act of 2009, but the Division's request was denied. (Personal Communication, Buck Bennett, Georgia Department of Natural Resources, July 30, 2009).

Removal efforts can also be funded from proceeds obtained through liens, foreclosures, and sales of abandoned vessels.

#### Lead State Agency

Georgia Department of Natural Resources

#### Insurance Requirements for Vessels

Boat insurance is not required in Georgia.

#### Disposal Requirements/Guidelines

Georgia law authorizes the disposal of AbV. Once removed from the water, AbVs may be subject to liens and foreclosure proceedings.

#### **Liens**

Any person who removes or stores an AbV shall have a lien on the vessel for the reasonable fees connected with such removal or storage, plus the cost of any advertisement. (*Id.* § 52-7-73(a)).

To qualify for the lien, the person must comply with the requirements of § 52-7-71.

These liens may be foreclosed in any court competent to hear civil cases, including magistrate courts. Liens should be foreclosed in magistrate courts only when the amount of the lien does not exceed the jurisdictional limits established by law for such courts. (*Id.* § 52-7-73(b)).

### **Foreclosures**

Proceedings to foreclose a lien on an AbV must be instituted within 1 year from the time the lien is recorded or asserted. (*Id.* § 52-7-74(1)).

The person wanting to foreclose must, by certified or registered mail or statutory overnight delivery, make a demand upon the owner for the payment of the reasonable fees for removal and storage plus the costs of any advertisement. The demand must also include an itemized statement of all charges. (*Id.* § 52-7-74(2)).

- A written demand is not required if the identity of the owner cannot be ascertained and the notice requirements of § 52-7-71(g) are complied with.

If the AbV owner fails to respond to the written demand within 10 days of delivery or refuses to pay, or the owner cannot be ascertained, the person removing or storing the AbV may foreclose on the lien by making an affidavit to a court of competent jurisdiction. (*Id.* § 52-7-74(3)(A)).

The fee for filing such an affidavit is \$5.00 per vessel.

Upon filing the affidavit, the lien claimant shall give the clerk or judge of the court the address, if known, of the owner, lessor, lessee, security interest holders, and lienholders of the abandoned vessel. (*Id.* § 52-7-74(4)(A)).

Notice will then be served by the court on the owner, lessor, lessee, security interest holders, and lienholders notifying such persons of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists; that such hearing must be petitioned for within 10 days after receipt of such notice; and that, if no petition for such hearing is filed within the time allowed, the lien will conclusively be deemed a valid one and foreclosure allowed.

Such notice shall be by certified mail or statutory overnight delivery or, if the owner, lessor, lessee, security interest holder, or lienholder is unknown, by posting such notice at the county courthouse in such place where other public notices are posted.

If a petition for a probable cause hearing is filed within the time allowed, a hearing shall be set within 10 days of the filing. If, at the hearing, the court determines that reasonable cause exists to believe that a valid debt exists, then the person asserting the lien shall retain possession of the vessel or the court shall obtain possession of the vessel. (*Id.* § 52-7-74(5)).

The owner-debtor may obtain possession of the vessel by giving bond and security in the amount determined to be due and costs of the action.

Within 5 days of the probable cause hearing, the owner-debtor may petition the court for a full hearing on the validity of the debt if further determination is desired. (*Id.* § 52-7-74(6)).

If no such petition is filed, the lien for the amount determined reasonably due is deemed valid and foreclosure allowed.

If such a petition is filed, a full hearing shall be set within 15 days of the filing. Upon the filing of such petition, neither the lienholder nor the court may sell the vessel, although possession of the vessel may be retained.

- If the court, after a full hearing, finds that a valid debt exists, it shall authorize foreclosure upon and sale of the vessel subject to the lien to satisfy the debt if such debt is not otherwise immediately paid. (*Id.* § 52-7-74(7)).

If the court finds the actions of the person asserting the lien were not taken in good faith, the court may award damages to the owner, any party which has been deprived of the rightful use of the vessel, or the lessee due to the deprivation of the use of the vessel (*Id.* § 52-7-74(8)).

If no petition for hearing is filed or the court determines after a full hearing that a valid debt exists, the court shall issue an order authorizing the sale of the AbV.

The holder of a security interest in or a lien on the vessel, other than the holder of a lien created by § 52-7-73, has a right, in the order of priority of such security interest or lien, to pay the debt and court costs. (*Id.* § 52-7-74(9)).

- If the holder of a security interest or lien does pay the debt and court costs, that person has the right to possession of the vessel, and that person's security interest in or lien on such vessel shall be increased by the amount so paid.

Upon the issuance of a court order authorizing the sale of a AbV, the person holding the lien on the abandoned vessel is authorized to sell such vessel at public sale. (*Id.* § 52-7-75(a)).

The proceeds of a sale conducted under § 52-7-75, after satisfaction of liens, security interests, and debts, are to be retained by the clerk of the court for a period of 12 months. (*Id.* § 52-7-77).

If no claim is filed by the owner of the AbV or any interested party, the clerk shall pay the remaining balance as follows:

- If the abandoned vessel came into the possession of the person creating the lien other than at the request of a peace officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made and into the general fund of the municipality, if any, in which the sale was made.
- If the abandoned vessel came into the possession of the person creating the lien at the request of a police officer of a municipality, the proceeds of the sale shall be paid into the general fund of the municipality;
- If the abandoned vessel came into the possession of the person creating the lien at the request of a county sheriff, deputy sheriff, or county police officer, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made; or

- If the abandoned vessel came into the possession of the person creating the lien at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the proceeds of the sale shall be paid into the general fund of the county in which the sale was made.

### Specific Location Factors or Limitations

Within Georgia state parks and historic sites, abandoned vessels shall be disposed of in accordance with the above provisions of Title 52 of the Georgia Code. (GA. COMP. R. & REGS. 391-5-1-.05(16)(d)(1)).

### Prioritization Scheme

The Georgia Abandoned Vessel Act does not set forth a prioritization scheme, but peace officers can immediately remove AbVs from public waters and property if such vessel poses a threat to public health of safety. Peace officers must wait five days before removing AbVs not posing such a threat. (GA. CODE ANN. § 52-7-72).

In 2007, the DNR developed new criteria to guide removal efforts. Once a year, DNR personnel inventory abandoned vessels and classify them by tiers. Priority (or tier) 1 abandoned vessels present an immediate danger to health or the environment or are blocking a navigation channel. Priority 2 abandoned vessels are considered general hazards, but the danger is mitigated by their location. Priority 3 vessels are very old and generally only the tanks remain. Priority 1 vessels are targeted for removal first, followed by Priority 2 and then Priority 3 if funding and resources remain. (Personal Communication, Buck Bennett, Georgia Department of Natural Resources, July 30, 2009).

### Other Pertinent Information

In 2007, the Georgia Legislature amended the state's abandoned vessel laws to provide for the revocation, suspension, denial, or nonrenewal of vessel certificates, commercial fishing boat licenses, or motor vehicles licenses for failure to pay AbV removal fees or liens.

Upon notice to DNR under § 52-70-71(e) (i.e., failure to redeem vessel or AbV at repair facility or stored by insurance company), the Commissioner may revoke, suspend, deny, or refuse to renew any vessel certificate of number or commercial fishing boat license which is held by or has been applied for by the person, until all fees connected with removal and storage of the vessel have been paid and any lien acquired under § 52-7-73 for such fees has been satisfied. (*Id.* § 52-70-71(e.1)(1)(A)).

The person shall be notified of the proposed order personally or by a letter sent by certified mail or statutory overnight delivery to the name and address indicated on the application for the certificate of number or license, or both.

The proposed order, unless appealed, becomes final 30 days after issuance.

- A person whose vessel certificate or number or commercial fishing boat license is proposed for revocation, suspension, denial, or nonrenewal has the right to enter an appeal in the

superior court of the county of his or her residence or in the Superior Court of Fulton County. (*Id.* § 52-70-71(e.1)(1)(B)).

Upon notice to DNR under § 52-70-71(e) and delivery of such notice to the state revenue commissioner, the state revenue commissioner may revoke, suspend, deny, or refuse to renew any motor vehicle registration which is held by or has been applied for by the person, until all fees connected with removal and storage of the vessel have been paid and any lien acquired under § 52-7-73 for such fees has been satisfied. (*Id.* § 52-70-71(e.1)(2)(A)).

The person shall be notified of the proposed order personally or by a letter sent by certified mail or statutory overnight delivery to the name and address indicated on the application for the registration.

The proposed order, unless appealed, becomes final 30 days after issuance.

- Any person whose motor vehicle registration is proposed for revocation, suspension, denial, or nonrenewal has the right to enter an appeal in the superior court of the county of his or her residence or in the Superior Court of Fulton County.

## HAWAII

### Definition of a Vessel

**Vessel:** All description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane. (HAW. REV. STAT. § 200-23).

### Definition of a Derelict/Abandoned Vessel

Hawaii distinguishes between abandoned and derelict vessels.

**Abandoned Vessel:** Any vessel which has been left unattended for a continuous period of more than 30 days and is within the waters of the State or on public property, or is on private property without authorization of the owner or occupant of the property. (*Id.* § 200-41).

**Derelict Vessel:** A vessel which has been left unattended for a continuous period of more than 24 hours if:

The vessel is sunk or in immediate danger of sinking, is obstructing a waterway, or is endangering life or property; or

The vessel has been moored or otherwise left in the waters of the State or on public property contrary to law, or the vessel has been left on private property without authorization of the owner or occupant of the property and if:

- The vessel's registration certificate or marine document has expired and the registered owner no longer resided at the address listed in the vessel registration or marine document records of the Hawaii Department of Land and Natural Resources (Department) or the U.S. Coast Guard;
- The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
- The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner; or
- The vessel registration records of the department and the marine document records of the U.S. Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined. (*Id.* § 200-48).

### Formal State Program For Abandoned Vessels

There is no formal state program in Hawaii. The Department addresses abandoned vessels through a collection of laws. (*See*, HAW. REV. STAT. §§ 200-41 – 200-55).

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation process in Hawaii. A vessel is considered abandoned when it meets the above definitional requirements.

The Chairperson of the Board of Land and Natural Resources is authorized to take abandoned and derelict vessels into custody and dispose of them. (*Id.* §§ 200-41, 200-49).

The Department may also assume control of any vessel that is grounded on a coral reef or in imminent danger of breaking up and cannot be immediately removed by the owner within 72 hours in a manner that is reasonably safe, as determined by the Department. (*Id.* § 200-47.5(b)).

#### Differences Between Commercial and Recreational Vessel Treatment

None.

#### Vessel Size Requirements or Limits

None.

#### Removal Requirements

##### **Abandoned Vessels**

Upon taking custody of an abandoned vessel, the Department shall immediately post a notice on the vessel and send a duplicate by registered or certified mail, with a return receipt requested, to the owner registered with the Department or documented by the U.S. Coast Guard or any lien holder or operator of the vessel on record with the Department or the U.S. Coast Guard at their respective last known address on record. (*Id.* § 200-42).

The notice must contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within 20 days after the mailing of the notice.

Such owner, lien holder, or operator of the vessel shall have 10 days after receipt of the mailed notice to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the Department for the impoundment of the vessel. The hearing must be held within 5 working days of the Department's receipt of the written request.

##### **Derelict Vessels**

Upon taking a derelict vessel into custody, the Department shall, as soon as reasonably possible,

Give public notice of intended disposition and procedure for requesting an administrative hearing;

Post a notice of intended disposition and procedure for requesting an administrative hearing on the vessel; and

Serve a duplicate original of the notice of intended disposition and procedure for requesting an administrative hearing by certified mail, return receipt requested on:

- The registered or documented owner of the vessel, if known, at the owner's last known address on record with the Department or the U.S. Coast Guard;
- All lien holders who have properly filed a financing statement, referencing the name of the registered or documented owner, in the Hawaii Bureau of Conveyances or who are shown on the records of the Department or the U.S. Coast Guard; and
- Any operator of the vessel on record with the Department or the U.S. Coast Guard. (*Id.* § 200-49(a)).

The owner, lien holder, or operator of the vessel has 10 days after the date of the public notice or receipt of the mailed notice, whichever occurs later, to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the Department for the impoundment of the vessel. The hearing must be held within 5 working days of the Department's receipt of the written request. (*Id.* § 200-49(b)).

### **Vessel Aground on State Property**

The Department may assume control of any vessel that is grounded on a coral reef or in imminent danger of breaking up and cannot be immediately removed by the owner within 72 hours in a manner that is reasonably safe, as determined by the Department. (*Id.* § 200-47.5(b)).

Once the Department assumes control over the vessel, the vessel shall be removed by conventional salvage methods to minimize damage to the natural resources and not become a hazard to navigation.

All costs and expenses of removing the vessel and damage to state or private property shall be the sole responsibility of the vessel's owner or operator. This provision applies whether the vessel is attended or deemed derelict under § 200-48.

The Department may take legal action to collect any costs or expenses incurred by it for any removal. All moneys collected shall be deposited in the boating special fund (*Id.* § 200-47.5(c)).

### Funding Sources

Because there is no formal program in Hawaii, there is no dedicated funding source. Removal activities are currently funded through the proceeds of the sale of abandoned and derelict vessels.

Proceeds of the sale of abandoned vessel and derelict vessels are first used to reimburse the boating special fund from which the expenses incurred in connection with the vessel were paid. (*Id.* § 200-47).

If money remains, the balance is to be deposited into the general fund of the State.

- The owner may recover any balance of the proceeds from the State by filing a claim with the Department of Budget and Finance within one year after the execution of the bill of sale. If no claim is made within the year allowed, the money shall become a state realization.

- A lien holder shall receive priority in payment from the balance of the proceeds to the extent of the lien holder's lien on the vessel.

If the proceeds of the sale are insufficient to cover the Department's expenses, the Department may bring an action for the deficiency in a court of appropriate jurisdiction against the registered or documented owner or any person who had an interest in the vessel when custody was taken.

### Lead State Agency

Hawaii Department of Land and Natural Resources, Board of Land and Natural Resources

### Insurance Requirements for Vessels

Boat insurance is not required in Hawaii.

### Disposal Requirements/Guidelines

#### **Abandoned Vessels**

If an abandoned 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 notice has been given at least once; provided that the public auction shall not be held less than 5 days after the notice is given. (*Id.* § 200-43).

A public auction is not required when the appraised value of the abandoned vessel is less than \$5,000, as determined by an independent appraiser who has at least one year of experience in the sale or purchase of vessels. Public notice of the intended disposition must be given at least once, however. (*Id.* § 200-45).

If no bid is received or a determination has been made that the value of the vessel is less than \$5,000, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency. (*Id.* §§ 200-43 and 200-45).

Any person having an interest in the abandoned vessel may take possession of the vessel prior to the date of public auction upon payment to the Department of all use fees, towing, handling and storage charges, appraisal and advertising expenses, and any other expenses incurred by the Department in connection with the vessel. (*Id.* § 200-44).

If the person taking possession of the vessel is not the registered or documented owner, that person, prior to taking possession of the vessel, shall pay the foregoing expenses and post security satisfactory to the Department which shall not exceed the value of the vessel.

- The security, if not forfeited, shall be returned to the person posting it within 2 years after receipt.

#### **Derelict Vessels**

If a derelict vessel is not repossessed within 20 days of the public notice or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that, when two or more purchasers indicate an interest in purchasing the vessel, the vessel must be sold at public auction to the

highest bidder, unless the vessel is exempt from public auction under § 200-45 (value of less than \$5,000). (*Id.* § 200.49).

If no purchaser expresses a desire to purchase the vessel, the vessel may be destroyed or donated to any governmental agency.

### Specific Location Factors or Limitations

#### **Vessels Abandoned Upon Premises of Vessel Repair Business, Private Marina, or Yacht Club**

When any person abandons a vessel upon the premises of a vessel repair business, a private marina, or a yacht club, the owner of the business or private marina, or the owner's representative, or the designated representative of the yacht club, may sell or dispose of the vessel. (*Id.* § 200.51).

Vessels on business premises of persons engaged in repair business, private marinas, and yacht clubs are deemed abandoned upon satisfaction of all the following conditions:

The service requested or required by a person whose vessel is navigated, towed, or brought to the repair business, private marina, or yacht club, such as mooring, storage, towing, and rendering estimates of the cost of repairs, has been performed;

No authorization is given to perform any further service or to allow mooring or storage, but the vessel is left on the repair business, private marina, or yacht club premises;

The owner of the repair business or private marina, or the owner's authorized representative, or the designated representative of the yacht club, has given notice by registered or certified mail, to the registered owner of the vessel at the address on record at the vessel repair business, private marina, or yacht club, and the address on record at the Department or U.S. Coast Guard, and to any person with a recorded interest in the vessel 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 shall contain a description of the vessel and its location.

- The notice need not be sent to an owner or any person with an unrecorded interest in the vessel whose name or address cannot be determined and, absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five calendar days after the mailing; and

The vessel is not repossessed within the 30-day period. (*Id.* § 200-52).

When a vessel is abandoned, the owner of the vessel repair business, or private marina, or the owner's authorized representative, or the designated representative of the yacht club, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vessel or dispose of it; provided that the vessel shall not be sold or disposed of less than 5 calendar days after the publication of the advertisement. (*Id.* § 200.53).

Upon the sale or disposal of the vessel, the owner of the vessel repair business, or private marina, or the owner's authorized representative, or the designated representative of the yacht club, shall file an affidavit with the Department stating to whom the vessel was sold or, if the vessel was not sold, the manner in which the vessel was disposed.

The authorized seller of the vessel shall be entitled to the proceeds of the sale to the extent of the compensation that is due the seller for services rendered in connection with the vessel, including reasonable and customary charges for towing, handling, and storage, and the cost of notices and advertising required by law. (*Id.* § 200-54).

A lien holder shall receive priority in payment from the balance to the extent of the lien holder's 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 State Director of Finance and shall be paid out to the registered owner of the vessel, if a proper claim is filed thereof within one year from the execution of the sale agreement. If no claim is made within the year allowed, the money shall become a state realization.

### **Vessels Aground on State Property**

All vessels grounded on state submerged lands, shorelines, or coral reefs shall be removed immediately by the owner or operator at the owner's or operator's expense. (*Id.* § 200-47.5(a)).

Vessels grounded on a sand beach, sandbar, or mudflat and not in imminent danger of breaking up shall be removed within 72 hours, unless otherwise agreed to by the Department.

Damage to state or private property caused by a grounded vessel shall be the sole responsibility of the vessel's owner or operator.

### **Small Boat Harbors**

The Department is authorized to impound and remove or dispose of any vessel moored or left at a small boat harbor or offshore mooring area when its presence is contrary to law or when the Department determines that removal is necessary to protect human life and property. (HAW. CODE R. § 13-231-10(a)).

Before taking action, the Department must provide notice to the owner to remove the vessel. The Department may remove the vessel 72 hours after notice is given.

HAW. CODE R. § 13-230-6 requires the Department provide notice utilizing one of the following methods:

- Posting the notice in a conspicuous place aboard the vessel or at the assigned berth;
- Mailing the notice to the person by certified mail, return receipt requested, at the person's last known address, provided that service by mail is deemed received and completed 5 days after the date of mailing; or
- Personal service.

In an emergency, where life or property is endangered or if a vessel may interfere with other vessels, construction or maintenance of berthing facilities, or with the free and proper navigation of

a waterway unless immediate action is taken, remedial action may be taken by the Department without prior notice. (*Id.* § 13-230-6).

Within 72 hours of impoundment, the Department must send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator. (*Id.* § 13-231-10(b)).

The owner or operator has 10 days after receipt of notice to submit a request for an administrative hearing in writing to the Administrator, Division of Boating and Ocean Recreation, Department of Land and Natural Resources.

The administrative hearing may be held solely for the purpose of allowing the owner or operator to contest the basis given by the Department for the administrative impoundment of the vessel.

Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment of all fees and costs due, and fines levied by a court. (*Id.* § 13-231-10(c)).

Any unauthorized vessel impounded under these provisions, which remains unclaimed by the person entitled to possession, the registered owner or a lien holder for more than 30 days, can be sold by the Department at public auction.

Prioritization Scheme

None.

## ILLINOIS

### Definition of a Vessel

“Vessel” or “watercraft” means every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water, innertube, air mattress or similar device, and boats used for concession rides in artificial bodies of water designed and used exclusively for such concessions. (625 ILL. COMP. STAT. 45/1-2).

### Definition of a Derelict/Abandoned Vessel

The Illinois lost and abandoned watercraft laws do not expressly define “abandoned vessel.” However, law enforcement agencies can authorize removal of a watercraft abandoned on waters for 24 hours or more. (*Id.* 45/3C-3(a)).

There are two regulatory definitions of “abandoned watercraft.”

The Illinois Historic Preservation Agency (Agency) and the Illinois Department of Natural Resources (Department) defines “abandoned watercraft” as a watercraft left unattended for a single period longer than six hours on Agency/Department-controlled land or water at an area which is not authorized for boat docking.” (ILL. ADMIN. CODE tit. 17, §§ 4160.50(a) (Agency); 110.45(a) (Department)).

### Formal State Program For Abandoned Vessels

There is no formal state program in Illinois addressing AbVs, but the state has enacted laws providing for the removal and disposal of AbVs. (*See*, 625 ILL. COMP. STAT. 45/3C).

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation process in Illinois. In general, when a watercraft is abandoned on state waters for more than 24 hours, any law enforcement agency with jurisdiction may authorize its removal by a towing service. (*Id.* 45/3C-3(a)).

If an abandoned, unattended, wrecked, burned or partially dismantled watercraft is creating a traffic or navigational hazard because of its position in relation to the waterway or because its physical appearance is impeding traffic or navigation, a law enforcement agency may authorize its immediate removal from the waterway by a towing service. (*Id.* 45/3C-3(b)).

The owner of the watercraft is responsible for all towing costs. Watercraft removed from public or private property and stored by a commercial relocater or any other towing service shall be subject to a possessory lien for services (*Id.* 45/3C-3(c)).

When an abandoned, lost, stolen, or unclaimed watercraft comes into the temporary possession or custody of a person other than the owner, that person is required to notify the municipal police when the watercraft is within the corporate limits of any city, village, or town or the State Police, Conservation Police, or the county sheriff when the watercraft is outside the corporate limits of a city, village, or town. (*Id.* 45/3C-2).

Upon receipt of such notification, the law enforcement agency will authorize a towing service to remove and take possession of the abandoned, lost, stolen, or unclaimed watercraft.

The towing service must safely keep the towed watercraft and its contents, and maintain a record of the tow for law enforcement agencies, until the watercraft is claimed by the owner or any other person legally entitled to possession or until it is disposed of.

Law enforcement agencies authorizing the towing of abandoned watercraft must keep and maintain a record of the watercraft towed, listing the color, manufacturer's trade name, manufacturer's series name, hull type, hull material, hull identification number, and registration number displayed on the watercraft. The record shall also include the date and hour of tow, location towed from, location towed to, and reason for towing and the name of the officer authorizing the tow. (*Id.* 45/3C-4).

A law enforcement agency impounding or authorizing the impounding of a watercraft, must send notification to the register owner no later than 10 days after the date of the impoundment or authorization. (*Id.* 45/3C-5).

If the agency is unable to determine identity of the registered owner, lienholder or other person legally entitled to ownership within the 10-day period after impoundment, then notification shall be sent no later than 2 days after the date the identity of the registered owner, lienholder or other person legally entitled to ownership of the impounded watercraft is determined.

When the registered owner, lienholder or other person legally entitled to the possession of a watercraft cannot be identified from the registration files of Illinois or another state, the law enforcement agency shall notify the Department of Natural Resources for the purpose of identifying the watercraft owner or other person legally entitled to the possession of the watercraft. (*Id.* 45/3C-6).

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

None.

#### *Vessel Size Requirements or Limits*

None.

#### *Removal Requirements*

There are no guidelines on how an abandoned watercraft is to be removed. As mentioned above, law enforcement agencies may authorize towing services to remove abandoned watercraft.

A law enforcement officer or agency, towing service owner, operator, or employee shall not be held liable for damages in any action brought by the registered owner, leinholder, or other person legally entitled to possession when the watercraft was processed and sold or disposed of as provided by these provisions. (*Id.* 45/3C-13).

In addition, the Department may break up, remove, sell, or otherwise dispose of a sunken vessel, boat, watercraft, or raft that has been obstructing or endangering the public use of any river, lake, harbor, sound, bay, canal, or other public or navigable waters of Illinois for more than 30 days. (615 ILL. COMP. STAT. 20/3).

### Funding Sources

Because there is no formal program in Illinois, there is no dedicated funding source. Local governments, however, are entitled to the proceeds from the public sale or disposition of vessels, after the deduction of towing, storage and processing charges. (625 ILL. COMP. STAT. 45/3C-11).

When a watercraft within the corporate limits of a city, village or town is towed, the proceeds are to be deposited in the treasury of such city, village or town.

When a watercraft located outside the corporate limits of any city, village or town is towed, the proceeds are to be deposited in the county treasury of the county where the watercraft was located at the time of the tow.

### Lead State Agency

Illinois Department of Natural Resources

### Insurance Requirements for Vessels

Boat insurance is not required in Illinois.

### Disposal Requirements/Guidelines

Whenever an abandoned, lost, stolen, or unclaimed watercraft remains unclaimed by the registered owner, leinholder, or other person legally entitled to possession in a city with a population of more than 500,000 for more than 15 days after notice has been given, it may be disposed of as provided in the "Municipal purchasing act for cities of 500,000 or more population," 65 ILL. COMP. STAT. 5/8-10-1, *et. seq.* (625 ILL. COMP. STAT. 45/3C-8(a)).

The Municipal Purchasing Act governs purchase orders and contracts, some of which require competitive bids.

For other locations, when an abandoned, lost, stolen, or unclaimed watercraft less than 7 years old remains unclaimed for a period of 30 days after notice has been given, the law enforcement agency or towing service having possession of the watercraft shall cause it to be sold at public sale to the highest bidder. (*Id.* 45/3C-8(b)).

At least 10 days prior to the sale, notice of the time and place of the sale shall be posted in a conspicuous place on the premises where the watercraft has been impounded and the law enforcement agency or the towing service shall notify the registered owner, lienholder and other persons legally entitled to the possession of the watercraft of the time and place of the sale by certified mail.

- The notice must contain a complete description of the watercraft to be sold and what steps must be taken by any legally entitled person to reclaim the watercraft.

When the identity of the registered owner, lienholder and other person legally entitled to the possession of an abandoned, lost or unclaimed watercraft of 7 years of age or newer cannot be determined by any means provided for by law, the watercraft may be sold without notice. (*Id.* 45/3C-9(a)).

Abandoned watercraft remaining unclaimed in areas other than cities with populations greater than 500,000 which are more than 7 years old must be kept in custody for a minimum of 10 days to allow for the identification and contact of the register owner and/or lienholder regarding disposition and an examination of the State Police stolen watercraft files. (*Id.* 45/3C-9(b)).

If disposition information has not been received from the registered owner or the lienholder by the end of the 10-day period, the law enforcement agency may authorize the disposal of the watercraft as junk.

If the police officer processing the watercraft believes it is worth more than \$200 and can be restored to safe operation condition, the law enforcement agency may authorize its purchase for salvage.

A watercraft classified as a historical watercraft may be sold to a person desiring to restore it.

Any time before a watercraft is sold at public sale or disposed of, the owner, lienholder or other person legally entitled to its possession may reclaim the watercraft by presenting to the law enforcement agency having custody of the watercraft proof of ownership or proof of the right to possession of the watercraft. No watercraft shall be released to the owner, lienholder or other person until all towing and storage charges have been paid. (*Id.* 45/3C-7).

The person reclaiming an abandoned watercraft must pay restitution fees of \$15.00 for removal and \$5.00 for each day's storage. (*See* ILL. ADMIN. CODE tit. 17, §§ 4160.50(b) and 110.45(b)).

#### Specific Location Factors or Limitations

None.

#### Prioritization Scheme

None in the statutes or regulations, although abandoned watercraft which are navigational hazards can be removed immediately. (625 ILL. COMP. STAT. 45/3C-3(b)).

## INDIANA

### Definition of a Vessel

Indiana's abandoned vessel laws refer to "watercraft."

**Watercraft:** A contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, sailboat, vessel operated by machinery either permanently or temporarily affixed, scow, tugboat, or any marine equipment that is capable of carrying passengers, except a ferry. (IND. CODE. § 9-13-2-198.5).

For purposes of IND. CODE §§ 14-15 and 14-29-8, **watercraft** means any instrumentality or device in or by means of which a person may be transported upon the public water of Indiana. The term includes a motorboat, sailboat, rowboat, skiff, dinghy, or canoe: (1) of any length or size; and (2) whether or not used to carry passengers for hire. (*Id.* § 14-8-2-305).

### Definition of a Derelict/Abandoned Vessel

While "abandoned watercraft" is not explicitly defined, § 14-15-3-30(a) states that "a watercraft found unattended in a sunken, beached, or drifting condition is considered to have been abandoned by the owner."

### Formal State Program For Abandoned Vessels

Indiana does not have a formal program to address abandoned vessels. A collection of statutory provisions provides the Indiana Department of Natural Resources (Department) and marina owners with some removal authority.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

It is unlawful to abandon a watercraft at any time on Indiana waters. (*Id.* § 14-15-3-30(a)).

Law enforcement officers of the Department may impound abandoned watercraft when located on public water. (*Id.* § 14-15-3-30(a)(1)).

The Department is required to notify the owner of an impounded watercraft, if determined and located. The owner may redeem the boat by payment of the storage fee, if any, plus any expenses incurred by the Department in the removal of the watercraft. (*Id.* § 14-15-3-30(a)(2)).

If the owner cannot be found, the abandoned watercraft must be held at a place of safekeeping for at least 90 days. (*Id.* § 14-15-3-30(a)(3)).

### Differences Between Commercial and Recreational Vessel Treatment

None.

### Vessel Size Requirements or Limits

None.

### Removal Requirements

There are no guidelines for how a vessel should be removed from public waters. Law enforcement officers of the Department may impound abandoned watercraft upon discovery.

The Department and the Department's employees are not liable for any damages caused by an abandoned watercraft or incurred to the watercraft during or after removal. (*Id.* § 14-15-3-30(b)).

### Funding Sources

There is no dedicated funding source, although proceeds received from the sale of abandoned watercraft at public auction are to be deposited in the Fish and Wildlife Fund. (*Id.* § 14-15-3-30(a)(5)).

The Department's Law Enforcement Division obtains approximately 55% of its operating funds from the Fish and Wildlife Fund. Its remaining operating funds come from the state's General Fund. (Personal Communication with Major Felix Hensley, Boating Law Administrator, Indiana Department of Natural Resources, Law Enforcement Division, Aug. 10, 2009).

### Lead State Agency

Indiana Department of Natural Resources

### Insurance Requirements for Vessels

Boat insurance is not required in Indiana.

### Disposal Requirements/Guidelines

Watercraft abandoned on public waters remaining unclaimed at the expiration of the 90-day period may be destroyed or sold at public auction by the Department. (*Id.* § 14-15-3-30(a)(4)).

Any money received from the sale must be deposited in the Fish and Wildlife Fund.

### Specific Location Factors or Limitations

The Department may only remove abandoned watercraft from public waters. There are no provisions for the removal from private property, except for marinas.

### **Marinas**

A marina operator may sell a watercraft that has been left without permission at the marina for more than 6 months and recover the operator's reasonable maintenance, repair, dockage, storage, and other charges (*Id.* § 32-34-10-2).

The 6-month period runs from the day written notice is sent by the marina operator to the last known address of the owner of the watercraft or personally delivered to the owner of the watercraft. If the notice is mailed, the marina operator must send notice by certified mail, return

receipt requested. Notice must include a description of the watercraft and a conspicuous statement that the watercraft is at the marina without permission. (*Id.* § 32-34-10-3).

According to § 32-34-10-4, a marina operator must do all of the following to sell a watercraft.

Perform a search of watercraft titles for the name and address of the owner of the watercraft and the name and address of any person holding a lien or security interest on the watercraft. The search required by this subdivision must be conducted in the following order:

- First, in the records of the state of registration as indicated on the exterior of the watercraft.
- Second, in the U.S. Coast Guard registration records maintained by the National Vessel Documentation Center.
- Third, in the records of the Indiana Bureau of Motor Vehicles.

Provide notice by certified mail, return receipt requested, or in person, to the last known address of the owner of the watercraft, to any lien holder with a perfected security interest in the watercraft, and to all other persons known to claim an interest in the watercraft.

- The notice must include an itemized statement of the charges, a description of the watercraft, a demand for payment within a specified time not less than 10 days after receipt of the notice, and a conspicuous statement that unless the charges are paid within that time, the watercraft will be advertised for sale and sold by auction at a specified time and place.

Advertise that the watercraft will be sold at public auction in conformity with the provisions of § 26-1-7-210 (enforcement of warehouse liens) and § 26-1-2-328 (sale by auction).

- The advertisement of sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the watercraft has been left without permission. The advertisement must include a description of the watercraft, the name of the person on whose account the watercraft is being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication.
- If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than 6 conspicuous places in the neighborhood of the proposed sale.

Conduct an auction sale, not less than 30 days after the return receipt is received by the marina operator, on the marina property where the watercraft was left without permission.

Provide a reasonable time before the sale for prospective purchasers to examine the watercraft.

Sell the watercraft to the highest bidder.

Immediately after the auction sale, execute an affidavit of sale in triplicate on a form prescribed by the Indiana Bureau of Motor Vehicles stating:

- That the above requirements have been met;
- The length of time that the watercraft was left on the marina property without permission;

- The expenses incurred by the marina operator, including the expenses of the sale;
- The name and address of the purchaser of the watercraft at the auction sale; and
- The amount of the winning bid.

If a marina operator sells a watercraft for more than the charges owed to the marina operator plus all reasonable expenses of sale, the marina operator shall pay the excess in the following order:

For the satisfaction of obligations held by secured parties with respect to the watercraft, in the order in which security interests in the watercraft were perfected.

To the owner of the watercraft. (*Id.* § 32-34-10-8).

Prioritization Scheme

None found in the statutes.

## LOUISIANA

### Definition of a Vessel

**Vessel:** Watercraft and air boats of every description, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (LA. REV. STAT. ANN. § 34:851.2(10)).

The Louisiana Oil Spill Prevention Response Act of 1991 defines “vessel” as “every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.” (*Id.* § 30:2454(29)).

### Definition of a Derelict/Abandoned Vessel

The Louisiana statutes do not contain a definition of abandoned vessels. The Louisiana Office of State Parks considers boats to be abandoned if “left unattended for more than seven consecutive days unless the proper permit or advanced written approval is granted by the site manager.” (LA. ADMIN. CODE tit. 25, § 307(G)).

### Formal State Program For Abandoned Vessels

The Louisiana Oil Spill Coordinator’s Office (LOSCO) has a formal program to address oil-bearing abandoned vessels. The Abandoned Barge Program began in 1993 and is aimed at minimizing the threat of an oil spill by locating and removing abandoned barges or vessels that pose a high risk for unauthorized discharge of oil. (Louisiana Oil Spill Coordinator’s Office, Abandoned Barge Program, [http://www.losco.state.la.us/ps\\_prevention.htm#abandonedbarge](http://www.losco.state.la.us/ps_prevention.htm#abandonedbarge)).

The Louisiana Oil Spill Prevention and Response Act requires LOSCO to inventory abandoned vessels/barges in Louisiana’s coastal waters and develop a priority ranking for removal. LOSCO’s initial inventory was finalized in 1996 and identified approximately 800 abandoned vessels/barges of which roughly 200 were characterized as posing a potential pollution problem. LOSCO is currently focusing on the systematic removal of the abandoned vessels/barges. (*Id.*)

LOSCO is authorized to use up to \$1 million from the state’s Oil Spill Contingency Fund for its removal activities.

- Monies in the fund are generated through fees paid by anyone “owning crude oil in a vessel at the time such crude oil is transferred to or from a vessel at a marine terminal within the state of Louisiana.” (LA. REV. STAT. ANN. 30:2485(A)).

The LOSCO has established a partnership, known as the Joint Operating Procedures (JOP) Program, with the U.S. Coast Guard and the EPA to remove abandoned oil-bearing vessels and barges from Louisiana waters to eliminate the threat of a potential discharge. (*Id.*).

The JOP calls for the determination of potential owners/operators and cleanup of the vessels and barges by the federal agencies if the owner/operator cannot be identified.

Removal is undertaken by either the state or the federal agencies. If the threat of midnight dumping is confirmed or significant, removal is the responsibility of the federal agencies. If the threat is not significant, removal is the state's responsibility.

Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

**Department of Environmental Quality**

Louisiana Revised Statute 34:843 provides for the removal and other disposition of abandoned vessels by the "federal, state, or local governing authority having jurisdiction thereof."

The Louisiana Department of Environmental Quality (DEQ) has jurisdiction over the removal of abandoned vessels pursuant to a delegation of authority by the Governor's Office of Homeland Security and Emergency Assistance and Preparedness under the Louisiana Disaster Act and Act No. 662 of 2006 Regular Session which tasked DEQ with the development and implementation of a comprehensive debris management plan. (La. Atty. Gen. Op. No. 07-0037 (2007).

DEQ is required to adhere to the following procedure when removing and disposing of abandoned vessels. Louisiana law requires owners of a numbered vessel to notify the State if the vessel is destroyed or abandoned (LA. REV. STAT. ANN. § 34:851.20(G)).

First, DEQ is to provide written notice by certified mail to the title owner of the abandoned vessel and the owner is given 30 days within which to provide a plan for removal of the vessel. (*Id.* 34:843(A)(1)).

- If the title owner of the vessel cannot be identified, DEQ must publish in the official journal of the parish where the vessel is located a notice that the vessel will be removed and disposed of by DEQ after thirty days of publication.

If the vessel poses no immediate danger to life or property, the owner is required to provide DEQ with a plan for removal of the vessel within 30 days of receiving notice. DEQ must approve or reject the plan within 30 days of submission. (*Id.*)

- If a plan of removal is not presented to DEQ, or is rejected, then DEQ may remove and dispose of the vessel, or sell, exchange, or otherwise transfer ownership of the vessel to any person, corporation, or entity for any price or consideration that DEQ deems reasonable. (*Id.* § 34:843(B)(1)).

If the vessel poses an immediate threat to life or property, DEQ may remove and dispose of the object immediately. Any object within one hundred feet of a drainage pump discharge station is presumed to be an immediate danger to life or property. (*Id.* 34:843(A)(2)).

Violations of § 34:843 are punishable by a \$500 fine and/or six months in prison. (*Id.* 34:843(D)).

**Important Note:** *The delegation of authority to DEQ was a response to the overwhelming debris removal needs of the state following Hurricanes Katrina and Rita in 2005. DEQ does not wish to retain this authority permanently. (Personal Communication with Dwight Bradshaw, Louisiana DEQ, Aug. 25, 2009).*

## **Louisiana Oil Spill Coordinator's Office**

Under the Louisiana Oil Spill Prevention and Response Act (OSPRA), a person may not leave or abandon a vessel involved in an actual or threatened unauthorized discharge of oil in coastal waters or on public or private lands or at a public or private port or dock in a wrecked, derelict, or substantially dismantled condition without the consent of LOSCO (Coordinator) (*Id.* § 30:2469(A)).

OPRSA requires the Coordinator to locate, identify, mark, and analyze the contents of any abandoned or derelict vessels or structures found within the state. (*Id.* § 30:2469(B)).

Vessels containing oil or oil-based materials are to be given priority for removal on the basis of highest risk to human health and safety, the environment, and wildlife habitat.

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

None.

### *Vessel Size Requirements or Limits*

None.

### *Removal Requirements*

There are no statutory provisions on how vessels should be removed, although DEQ and other agency have to comply with all federal, state, and local laws.

The Coordinator is authorized to remove any vessel described in § 30:2469(A) and recover the costs of removal from the owner or operator of the vessel or structure. (*Id.* § 30:2469(C)).

If the owner or operator cannot be located, the Coordinator may use up to \$1 million from the Oil Spill Contingency Fund in any fiscal year for the removal of such vessels or structures.

DEQ may petition the Coordinator for the removal of any vessel or structure describe in § 30:2469(A). The Coordinator may either comply with the request or submit the matter to the interagency council for review. (*Id.* § 30:2469(D)).

The Office of Conservation in the Department of Natural Resources (DNR) may petition the Coordinator to abate an unauthorized discharge or the threat of a discharge from a facility or structure which the Secretary of DNR certifies to be involved in an actual discharge or poses a threat of a discharge and for which a viable responsible party cannot be immediately located. (*Id.* § 30:2469(E)).

Upon approval of the DNR's petition, the Coordinator shall reimburse the Office of Conservation for all expenses incurred and seek reimbursement from the Oil Spill Contingency Fund. The Coordinator can use up to \$2 million from the fund in any fiscal year for these purposes.

### *Funding Sources*

In general, there is no dedicated funding source for removal efforts, although LOSCO is authorized to tap into the Oil Spill Contingency Fund to recover costs if vessel owners cannot be located. The owner

of the vessel pays for all costs associated with its removal. If the owner cannot be identified or located, the removing authority may sell the vessel and keep the proceeds. (*Id.* § 34:843).

Lead State Agency

Louisiana Department of Environmental Quality (AbV generally, *but see note above*) and the Louisiana Oil Spill Coordinator's Office (AbV that threaten release of oil)

Insurance Requirements for Vessels

Boat insurance is not required in Louisiana.

Disposal Requirements/Guidelines

There are no guidelines for how vessels should be disposed of. Sec. 34:843 authorizes state agencies to sell and dispose of abandoned vessels.

Specific Location Factors or Limitations

None.

Prioritization Scheme

The OSPRA provides a prioritization scheme for the removal of vessels under the Act. The Coordinator is directed to establish a priority for removal of abandoned and derelict vessels or structures on the basis of highest risk to human health and safety, the environment, and wildlife habitat. (*Id.* § 30:2469(B)).

In addition, abandoned vessels posing an immediate danger to life or property are to be removed immediately by the owner. (*Id.* § 34:843(A)(2)).

## MAINE

### Definition of a Vessel

**Watercraft:** Any type of vessel, boat, barge, float or craft 20 or more feet in length that is used or capable of use as a means of transportation on water. “Watercraft” includes seaplanes. (ME. REV. STAT. ANN. tit. 12, § 1866(1)(D)).

### Definition of a Derelict/Abandoned Vessel

Maine uses the term “abandoned watercraft,” which is defined as “any watercraft that is inoperative and neglected, submerged or partially submerged or that has been left by the owner in coastal waters without intention of removal.” (*Id.* § 1866(1)(A)).

This definition includes motors, electronic and mechanical equipment and other machinery customarily used in the operation of watercraft.

### Formal State Program For Abandoned Vessels

While there is statutory authorization in § 1866(4) for an abandoned watercraft removal program, one has never been funded by the state legislature or established by an agency. Section 1866(4) states, in part, that “the director [of the Bureau of Parks and Lands] shall establish and implement, subject to available funding, a program to remove from coastal waters those abandoned watercraft that have been reported [ ]. The program must provide that, if another government agency is responsible for removal of an abandoned watercraft, the director shall notify that agency of the existence of that abandoned watercraft. Funding for removal by the director comes from funds available from the Submerged Lands Fund established under section 1861.”

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation process in Maine. A watercraft is considered abandoned if it meets the above definitional requirements.

### Differences Between Commercial and Recreational Vessel Treatment

None.

### Vessel Size Requirements or Limits

None.

### Removal Requirements

Under § 1866(2) an abandoned watercraft is subject to removal only under if:

A permit under Title 38, section 9 has not been granted by the municipal board or commission entrusted with harbor management for the area;

- It is unlawful for any person to bring into or maintain in the harbor any derelict watercraft, watercraft for salvage, or abandon any watercraft in the harbor without a permit from the harbormaster or, if there is no harbormaster, the appropriate municipal official. (*Id.* tit. 38, § 9)
  - Watercraft which are to be salvaged by firms licensed by the State to do salvage work are excluded from this prohibition.
- The municipal board or commission entrusted with harbor management shall be the sole determiner as to what constitutes a watercraft that is derelict and what constitutes a watercraft that is abandoned.

A landowner has not granted permission to a watercraft owner to abandon a watercraft on that landowner's property; or

Notice has been given within 120 days of the date that the municipal board or commission determines, in its opinion, that the watercraft has been abandoned.

***Important Note:*** *Watercraft abandoned prior to July 1, 1993 are not subject to removal under § 1866.*

Upon notification by a municipal board or commission that a watercraft has been abandoned, the Director of the Bureau of Parks and Lands shall investigate any report of an abandoned watercraft and give notice to the owner if an owner can be identified. (*Id.* § 1866(4)(A)).

Municipal boards or commissions must initially make an attempt to determine the owner of the watercraft. (*Id.* § 1866(3)).

The notice must require the owner to respond within 15 days and to remove the watercraft from the coastal waters within 60 days of notification or, if the watercraft is icebound, within 60 days of ice-out in the body of water where the watercraft is located.

If the owner of a watercraft to whom the director has given notice does not respond to the notice and remove the watercraft within the time period specified or the owner cannot be identified or contacted, the Director may initiate removal of the watercraft.

The Director may authorize a third party to remove the abandoned watercraft if 95% of the proceeds from the sale of the salvaged watercraft shall accrue to the third party and 5% to the Submerged Lands Fund established under § 1861. (*Id.* § 1866(4)(C)).

If the Director determines at any time that a watercraft is a health or safety hazard, the Director may immediately remove the watercraft from the coastal waters. (*Id.* § 1866(4)(D)).

### Funding Sources

Funding for removal by the Director comes from funds available from the Submerged Lands Fund established under § 1861. Section 1861 provides that money credited to the fund may be used to manage submerged lands pursuant to § 1862, provide grants to municipalities pursuant to § 1863, and

remove abandoned watercraft. The legislature has also established the Shore and Harbor Management Fund to support shore and harbor management improvement activities. (*Id.* § 1863).

Lead State Agency

Maine Department of Conservation, Bureau of Parks and Lands

Insurance Requirements for Vessels

Boat insurance is not required in Maine.

Disposal Requirements/Guidelines

The method of removal of abandoned watercraft, whether by the owner, a third party, or the state, must comply with all state and federal environmental laws. (*Id.* § 1866(5)).

If the Director removes a watercraft from coastal waters under §1866, the Director may sell the watercraft. (*Id.* §1866(4)(E)).

Any proceeds from the sale must first be applied to the costs to the State directly related to the expense of removal of the watercraft. The proceeds should then be applied to any liens against the watercraft. Any money that remains must accrue to the Submerged Lands Fund.

Specific Location Factors or Limitations

Watercraft that have been abandoned prior to July 1, 1993 are not subject to removal under § 1866.

The state only has jurisdiction to remove abandoned watercraft located in “costal waters.” “Coastal waters” means those waters within the jurisdiction of the State including the marginal seas, the high seas, and submerged lands. (*See id.* tit. 1, § 2)..

Abandoned watercraft located on intertidal land may not be removed by the Director without the permission of the landowner. (*Id.* § 1866(4)(F)).

Prioritization Scheme

None, although abandoned watercraft that are health or safety hazards may be removed immediately.

## MARYLAND

### Definition of a Vessel

The State Boating Act states that a vessel “means every description of watercraft, including an ice boat but not including a seaplane, that is used or capable of being used as a means of transportation on water or ice.” (MD. CODE ANN., NAT. RES. § 8-701(s)(1)).

Vessel includes the motor, spars, sails, and accessories of a vessel. (*Id.* § 8-701(s)(2)).

### Definition of a Derelict/Abandoned Vessel

Maryland uses the term “abandoned.” Pursuant to MD. CODE ANN., NAT. RES. § 8-721(a), an “abandoned vessel” refers to:

Any vessel that is left illegally or has remained without permission for more than 30 days on public property, including public marinas, docks, or boatyards;

Any vessel that has remained at the following locations for more than 90 days without the consent of the owner or person in control of the property;

- A private marina or property operated by a private marina;
- A private boatyard or property operated by a private boatyard;
- A private dock; or
- At or near waters’ edge on private property.

Any vessel that has remained on private property other than the private property described above for more than 180 days without the consent of the owner or person in control of the property; or

Any vessel that has been found adrift or unattended in or upon the waters of the State, and is found in a condition of disrepair as to constitute a hazard or obstruction to the use of the waters of the State or presents a potential health or environmental hazard.

### Formal State Program For Abandoned Vessels

Maryland’s Abandoned Boat Program has been in place since the mid-1980s. (NOAA, REVIEW OF STATE ABANDONED AND DERELICT VESSEL PROGRAMS 4 (2006)). As mentioned below, the Program is funded through the state’s Waterway Improvement Fund. The Maryland Department of Natural Resources (DNR) conducts annual surveys of harbors, marinas, and county and state parks to identify and record potential AbVs. (*Id.*)

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

It is unlawful to abandon, as defined in § 8-721, any vessel upon any waters of the state. (MD. CODE ANN., NAT. RES. § 8-725.1(a)).

The last known registered owner shown on the certificate of title issued under § 8-715 is considered the prima facie owner of a vessel at the time the vessel was abandoned and the person who abandoned the vessel. (*Id.* § 8-725.1(b)).

Any person who abandons a vessel is guilty of a misdemeanor. Upon conviction, that person is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 6 months, or both. That person is also liable to the State for the cost of the vessel's removal. (*Id.* §§ 8-725.1(c)(1) and (c)(3)).

- A person found guilty of a second or subsequent violation is subject to a fine not exceeding \$2,000 or imprisonment not exceeding 1 year, or both. (*Id.* § 8-725.1(c)(2)).

These provisions do not apply to a vessel wrecked through an act of God or negligence of a third party. (*Id.* § 8-725.1(c)(4)).

**Process for DNR Seizure or Removal of AbV:**

DNR may seize, remove, and take into custody any abandoned vessel. For this purpose, DNR may use its own personnel, equipment, and facilities or use other persons, equipment, and facilities for removing, preserving, or storing abandoned vessels. DNR, however, may not be held liable for any damage to an abandoned vessel which may occur during removal, storage, or custody of the vessel. (*Id.* § 8-721(b)).

No later than 15 days before an abandoned vessel is seized, removed, or taken into custody, DNR shall send a notice, by certified mail, return receipt requested, bearing a postmark from the U.S. Postal Service to the last known registered owner of the vessel, as shown on the records of the Department. (*Id.* § 8-721(c)(1)).

As soon as reasonably possible but not later than 15 days after DNR takes an abandoned vessel into custody, DNR shall send a notice, by certified mail, return receipt requested, bearing a postmark from the U.S. Postal Service to the last known registered owner of the vessel and to each secured party, as shown on the records of the DNR. (*Id.* § 8-712(c)(2)).

The DNR notices must describe the vessel; give the location where the vessel is being held; inform the owner and secured party of a right to reclaim the vessel, within 3 weeks of receipt of the notice, upon payment to DNR of any expenses incurred during removal and custody of the vessel; and state that the failure to claim the vessel will constitute a waiver of all right, title, and interest in the vessel and a consent to the DNR's disposition of the vessel. (*Id.* § 8-712(d)).

If DNR is unable to determine the last registered owner or the identity of any secured party of the abandoned vessel, or if the certified mail notice required is returned as undeliverable, DNR shall give the required notice by publication in at least one newspaper of general circulation in the area where the abandoned vessel was found.

The notice by publication shall contain the information required by § 8-712(d) and be published within 30 days of the seizure of the abandoned vessel, or within 15 days of the return of the certified mail notice as undeliverable. (*Id.* § 8-712(e)).

If the owner or secured party fails to claim the abandoned vessel within 3 weeks after the certified mail notice or after the notice by publication is given, DNR may sell the vessel at public auction, proceed to receive title to the vessel pursuant to § 8-722, or otherwise dispose of the vessel. (*Id.* § 8-712(f)).

DNR may delegate its authority to remove and dispose of abandoned vessels to any local jurisdiction that consents to the delegation. (*Id.* § 8-712(h)).

### **Process for Acquiring Title:**

The process for acquiring title to an AbV is set forth in MD. CODE ANN., NAT. RES. § 8-722. In general, a landowner, a landowner's lessee, or a landowner's agent may acquire title to any abandoned vessel on the landowner's land or the water immediately adjacent to the landowner's land. Acquisition of title divests any other person of any interest in the vessel.

**Step 1:** The person seeking to acquire title, using boat number or hull identification number, determines the owner's last known address and lien information (obtained from the State boat licensing agency where last registered, identified by the first two letters of boat number).

- Then that person sends a registered letter, return receipt requested, to the last known address of both the owner and the lien holder (when applicable).
  - Letter should advise that if ownership is not claimed and vessel removed within 30 days, title will be claimed through the abandoned boat law.
  - If an owner or lien holder cannot be determined, no letter is required. (*Id.* § 8-722(c); *see also* DNR Licensing and Registration Service, Instructions for Claim for Abandoned Vessel, *available at* [http://www.dnr.state.md.us/download/B117\\_abinstuction.pdf](http://www.dnr.state.md.us/download/B117_abinstuction.pdf)).

**Step 2:** The person seeking to claim title shall place a notice in a newspaper of general circulation published in the county where the vessel is located. Notice must include:

- Vessel description and location
- Any identifying number; and
- A statement that if vessel is not claimed within 30 days of publication date, that person will apply for title to the vessel in the person's name. (*Id.*)

**Step 3:** At the end of the 30-day period, upon submission of the following items, the person's application for title can be processed through the DNR:

- Completed DNR Form B-240 (<http://www.dnr.state.md.us/download/DNRB-240.pdf>) and DNR Form B-117 (<http://www.dnr.state.md.us/download/B117.pdf>);
- Proof of owner notification;
  - If the owner has been identified, proof is shown by submitting the original signed registered letter receipt, or the returned envelope marked "Undeliverable" by the Post Office and a copy of the letter.
  - If the owner could not be identified, a written explanation of the attempts to locate the boat owner and lien holder must be submitted.

- If the applicant is not the owner of the land, the applicant must submit the landowner's written authorization to claim the vessel as abandoned and to receive title in his/her name;
- Original Certificate of Publication for legal notice issued by the newspaper;
- Clear photographs of the vessel (showing existing boat number, if applicable); and
- A tracing or certification of the hull identification number. (*Id.*)

**Step 4:** Upon receipt of the required documentation and payment of any fees and taxes due, the Department shall issue title to the vessel to the applicant. (MD. CODE ANN., NAT. RES. § 8-722(c)(4)).

- The applicant shall bear any cost incurred in receiving title to a vessel. If after receiving title, the applicant destroys or otherwise disposes of the vessel, the applicant shall report this information to DNR within 15 days giving every detail.

By proceeding in the same manner as delineated for property owners, DNR may receive title to any abandoned vessel found on state waters or land. (*Id.* § 8-722(c)(7)).

It is unlawful for a person to obtain or attempt to obtain title to a vessel under the provisions of § 8-722 through any fraudulent means. (*Id.* § 8-722(d)).

#### Differences Between Commercial and Recreational Vessel Treatment

None. § 8-721 does not distinguish between commercial and recreational vessels.

#### Vessel Size Requirements or Limits

None.

#### Removal Requirements

Maryland does not have specific guidelines governing how AbVs are to be removed from the water.

If the abandoned vessel is in such a condition of disrepair that DNR cannot remove the vessel intact, DNR may dispose of the vessel in whatever manner is reasonable without providing notice. (*Id.* § 8-712(g)).

#### Funding Sources

Funding for the removal of AbV is obtained through the Waterway Improvement Fund (WIF). The WIF was established in 1966 by the State Boating Act to provide support for a variety of projects including marking and dredging channels and harbors; constructing marine facilities; and "clearing debris, aquatic vegetation, and obstruction from waters of the State." (*Id.* § 8-707(a)). The WIF is funded primarily through the collection of an excise tax (levied at the rate of 5% of the fair market value) on the registration and sale of vessels within the state.

DNR budgets \$500,000 annually to remove abandoned boats and debris from state waterways from the WIF. Each year these funds are used to remove tons of debris and approximately 50 abandoned

boats from Maryland waters. (Maryland DNR, *Ask an Expert: How can we get rid of abandoned boats in our waterways?*, [http://dnr.maryland.gov/mydnr/askanexpert/abandoned\\_boats.asp](http://dnr.maryland.gov/mydnr/askanexpert/abandoned_boats.asp)).

### Lead State Agency

Maryland Department of Natural Resources

### Insurance Requirements for Vessels

Boat insurance is not required by law in Maryland.

### Disposal Requirements/Guidelines

There are no guidelines as to how an abandoned vessel should be disposed by someone who has acquired title.

### Specific Location Factors or Limitations

Maryland's policy is that the DNR will remove vessels from navigation channels or public property only. (E-mail from LaJuan Lee, Chief, Derelict Boats and Debris, Maryland DNR, to Stephanie Showalter, Director, National Sea Grant Law Center (July 14, 2009, 8:00:14 CST) (on file with NSGLC)).

### **Removal of AbV from Marinas:**

The owner or operator of a marina or the owner's or operator's agent may have a vessel removed from the marina by a private person if the vessel has remained on the marina premises without permission for more than 48 hours and the owner, operator, or agent has placed in conspicuous locations signs that:

State that vessels left at the marina without permission for more than 48 hours are subject to removal at the vessel owner's expense;

State the location to which the vessel will be removed;

State that the vessel owner will be responsible for all costs associated with the removal and storage of the vessel; and

Provide the telephone number of a person who can be contacted to arrange for the reclaiming of the vessel by its owner or the owner's agent. (*Id.* § 8-721.1(a)).

A vessel may not be removed from a marina to a location that is more than 30 miles from the marina. (*Id.* § 8-721.1(b)).

The owner or operator of a marina, or the agent of the owner or operator, on finding a vessel left at the marina without permission, shall make a reasonable attempt to notify the vessel owner or the vessel owner's agent of the intended removal of the vessel before the vessel may be removed. (*Id.* § 8-721.1(c)).

A person who removes the vessel from a marina is required to notify the vessel owner or the vessel owner's agent at the earliest possible time after removing the vessel from the marina, and shall provide the following information:

A description of the vessel including the vessel's certificate of boat number;  
The date and time the vessel was removed;  
The reason the vessel was removed; and  
The locations from which and to which the vessel was moved. (*Id.* § 8-721.1(d)).

A person removing a vessel from a marina must have received authorization from the marina owner before removing the vessel and may not pay any remuneration to the owner of the marina. (*Id.*)

- That person must immediately deliver the vessel directly to a location customary used by that person. (*Id.* § 8-721.1(e)).
- The person who exercises control over the vessel at the location to which the vessel is delivered shall provide the vessel owner or the vessel owner's agent immediate and continuous opportunity to retake possession of the vessel.

Any person who removes a vessel from a marina in violation of any of the above provisions is liable for actual damages sustained by the vessel owner or the vessel owner's agent as a result of the violation and is liable to the vessel owner or the vessel owner's agent for up to triple the amount paid by the owner or the owner's agent to retake possession of the vessel, as a court may determine. (*Id.* § 8-721.1(f)).

#### Prioritization Scheme

AbVs that are navigational or environmental hazard are DNR's priority. (E-mail from LaJuan Lee, Chief, Derelict Boats and Debris, Maryland DNR, to Stephanie Showalter, Director, National Sea Grant Law Center (July 14, 2009) (on file with NSGLC)).

Funds from the WIF are allocated to Maryland counties according to need. (NOAA, REVIEW OF STATE ABANDONED AND DERELICT VESSEL PROGRAMS 4 (Oct. 2006)).

## MASSACHUSETTS

### Definition of a Vessel

**Vessel:** Watercraft of every description, except a seaplane on the water used or capable of being used as a means of transportation on water. (MASS. GEN. LAWS ch 90B, § 1).

### Definition of a Derelict/Abandoned Vessel

There is no explicit definition of a derelict or abandoned vessel. However, vessels that have remained unclaimed for more than 100 years or are valued at more than \$5,000 are considered “underwater archaeological resources” and may not be removed without a permit from the Massachusetts Board of Underwater Archeological Resources. (*Id.* ch. 91, § 63).

According to a Massachusetts Department of Fish and Game Division of Law Enforcement regulation on towing, a vessel is presumed abandoned “if left on the shores of the waters of the Commonwealth not moored, anchored or made fast to the shore and unattended and/or on property of another without the consent of such property owner for a period of greater than 72 hours.” (323 MASS. CODE REG. § 2.10(4)).

The last owner of record of a vessel at the time it was abandoned shall be presumed to be the person who abandoned the same or caused or procured its abandonment, unless such vessel has been reported as stolen.

However, according to a Massachusetts Environmental Police (which is part of the Department of Fish and Game) policy setting forth procedures for obtaining legal ownership of abandoned boats and other property, a vessel is abandoned if it:

Has remained moored, grounded, or otherwise attached or fastened to or upon or immediately adjacent to private property for more than 30 days without the consent of the owner or person or entity in control of the property; or

Has been found adrift or unattended in or upon the waters of the Commonwealth and constitutes a potential health, public safety, or environmental hazard; or

Has been in a wrecked, submerged, partially submerged, and inoperative or partially dismantled condition *within* the waters of the Commonwealth for more than 30 days. (Mass. Env. Police, *Procedures for Obtaining Legal Ownership of Abandoned or Salvaged Boats, ATVs or Snowmobiles* (effective 12/01/2002) available at <http://www.mass.gov/dfwele/dle/abandonedproc.pdf> ).

**Important Note:** Key aspects of this policy, not related to the definitions, are in conflict with new legislation passed in 2008 and, as a result, may no longer be effective.

If an agency policy conflicts with a regulation, the regulation usually controls. However, § 2.10 deals with the towing of vessels by law enforcement officers, as opposed to the assertion of ownership by private parties. The DFG’s definition of “abandoned” appears to vary depending on who is taking action.

### Formal State Program For Abandoned Vessels

Massachusetts does not have a formal program for abandoned vessels. Scattered provisions of the Mass. Gen. Laws provide for the removal of wrecked and abandoned vessels. In 2008, the Massachusetts Legislature established the Abandoned Vessel Trust Fund to assist the Department of Conservation and Recreation with the removal of abandoned vessels.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

#### **Department of Conservation and Recreation:**

If a wrecked, sunken, or abandoned vessel, or any unlawful or unauthorized structure or thing, is deposited or remains in the tide waters of the Commonwealth, except for the Charles River Basin, and the Department of Conservation and Recreation (DCR) find that it is, or is liable to cause or become, an obstruction to the safe and convenient navigation or other lawful uses of such water, the DCR may remove it or cause it to be removed. (MASS. GEN. LAWS ch. 91, § 39).

The DCR is also authorized to take charge of any wrecked vessel or other shipwrecked property, not in the custody of its owner, agent, or any other person lawfully authorized to take possession of it, located on any of the shores or waters of the Commonwealth, except the Charles River Basin, if its value is more than \$100.00 (*Id.* ch. 91, §38).

- If the value of the wrecked vessel is less than \$100.00, the DCR may take charge of it.

If the owner of the vessel or other parties having an interest in the vessel are known, the DCR is required to provide written notice to the owner to remove such vessel within the timeframe identified in the notice. (*Id.* ch. 91, § 40).

The DCR may provide such notice by delivering it by hand, by leaving it at the usual place of business or residence, or by mail.

The DCR may remove the vessel if it is not removed within the specified timeframe, and in a manner and to a place satisfactory to the DCR, or the owner is unknown. (*Id.* ch. 91, § 41).

The owner of a vessel (or a person with an interest in a vessel) who willfully or maliciously wrecks, sinks, or abandons it, is liable for the cost and expenses of such removal, or to repay the same when paid by the Commonwealth. (*Id.* ch. 91, § 42).

If not paid by the owner or another liable party, the costs and expenses may be paid by the state upon certification by the DCR and approval by the Governor and Executive Council. (*Id.* ch. 91, § 41).

If an owner fails to pay the cost and expenses of removing a vessel within 10 days after such removal is complete, the DCR is authorized to sell the vessel at public or private sale. (*Id.* ch. 91, § 43).

#### **Individuals:**

Any person who finds lost money or goods worth more than \$3.00 (which would include a vessel), the owner of which is unknown, is to report the finding to the local police in the town where the property

was found. If there is no police station, the person should post notice in two public places in the town or advertise in the local newspaper. (*Id.* ch. 134, § 1).

If no owner appears within one year of the finding, the goods become the property of the finder. (*Id.* ch. 134, § 4).

A Marine Environmental Police (MEP) policy requires individuals to take the following steps to acquire ownership over abandoned vessels.

First, the individual must submit a “Request for File Search” fact sheet (form AB-1). (Mass. Env. Police, *Procedures for Obtaining Legal Ownership of Abandoned or Salvaged Boats, ATVs or Snowmobiles* (effective 12/01/2002)).

- Upon receipt of Form AB-1, the Registration and Titling Bureau will search its database to determine the last known owner or lien holder.
- If the Bureau’s database does not identify an owner or lien holder, the individual must request a Marine Theft Officer perform an inspection of the abandoned property.

If after 30 days, the Marine Environmental Police determine that the vessel is abandoned, and not stolen, the individual must notify the owner, any lien holder, and, for vessels within state waters, the Board of Underwater Archeological Resources by certified first class mail, return receipt requested, to the owner’s, lien holder’s, or other required party’s address of record.

- Notice is not required if the vessel owner cannot be identified after a reasonable search and no lien holder appears on record.

If the owner does not reply within 30 days of receiving notice, the policy requires the claimant to post notice for 3 consecutive days in a newspaper of general circulation published in the county, city, or town where the property is located, where the owner of the boat has its address, or if the owner’s name and address are unavailable, where a lien holder has its place of business.

- The notice must contain a description of the vessel, including any identifying numbers; the vessel’s location; a statement informing the owner and lien holder of their right to reclaim the property within 30 days subject to the rights of any other lien holders; a statement that failure to claim property will constitute a waiver of all rights, title and interest in the property; and a statement that if ownership or lien holder interest is not claimed and the vessel is not removed within 30 days of the last day of notice by publication, whichever is later, the claimant may apply to the MEP for title to the property.

If the owner or lien holder fails to claim the property within 30 days or after the last day of notice is given by publication, whichever is later, and if the State and the federal government is not the owner, the claimant may apply to the MEP for title, subject to any lien which is valid and enforceable.

If more than one person holds a lien and is owed money, Massachusetts requires that the court consider all the claims together and issue an order as may be necessary to prevent the enforcement of a double lien for the same labor, materials, stores, storage, provisions or other articles, and to secure the rights

of each lien holder. (*Id.* ch. 255, § 20).

The proceeds from the sale of the vessel, after deducting all costs and expenses, is to be distributed among the several claimants according to the amount of their respective debts.

- If the proceeds are insufficient to satisfy all of the liens, those who have liens for labor shall receive a percentage on their respective claims one third greater, as near as may be, than those who have liens for materials, stores, storage or other articles.

All proceeds that remain are placed in the Abandoned Vessel Trust Fund.

### **Lienholders**

Normally, a person seeking to enforce a lien on a vessel must file a civil action (lawsuit) in court. This allows the court to prevent the sale of the vessel by the owner until the matter can be resolved and the debt repaid.

Massachusetts, however, allows lienholders to sell at public auction or dispose of a vessel whose title is presumed to have been abandoned without filing a civil action. (*Id.* ch. 255, § 17). Title to a vessel shall be presumed to have been abandoned if:

- The lienholder sent a notice to the owner of record by certified mail at his last known address, which includes the amount of the lien and any proposed disposition or sale of the vessel;
- The lienholder published a notice of the lien, which shall include, but not be limited to: a description of the vessel, a description of where the vessel is located and a proposed disposition or sale in a newspaper of general circulation in the city or town of the owner of record's last known address for 3 consecutive days; and
- No response or reply was received from the owner of record within 90 days after the date of publication indicating an ability to satisfy the debt to the lienholder.

The lienholder may dispose of the vessel upon filing with the Marine Title Division of the Department of Environmental Police a notarized affidavit stating that no reply was received.

If the lienholder elects to hold a public auction then, upon receipt of the notarized affidavit and notice, the Marine Title Division, will issue an abandonment of title document to the lienholder, if requested, and thereafter, issue new title documents to the purchaser of the vessel at public auction. (*Id.*)

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

None.

### *Vessel Size Requirements or Limits*

None.

### *Removal Requirements*

There are no provisions in Massachusetts setting forth how abandoned vessels should be removed.

#### Funding Sources

In 2008, the Massachusetts Legislature authorized the established of the Abandoned Vessel Trust Fund. The Trust Fund may be used by the DCR for the purpose of removing from the public waterways vessels on which title may be presumed to have been abandoned. (MASS. GEN. LAWS ch. 10 § 35GG). The Trust Fund is funded through legislative appropriations and revenues from the sale of abandoned vessels. Proceeds from the sale of abandoned vessels must be held in trust for the former owner for a period of two years. Upon expiration of the two-year period, the proceeds become property of the Trust Fund.

#### Lead State Agency

The Massachusetts Department of Conservation and Recreation

#### Insurance Requirements for Vessels

Boat insurance is not required by law in Massachusetts.

#### Disposal Requirements/Guidelines

None.

#### Specific Location Factors or Limitations

When wrecked, sunken or abandoned vessels are found upon the shores or waters of the Charles River basin, the Metropolitan District Commission has removal authority. (*Id.* ch. 92, § 72).

The Charles River Basin includes the Charles River and its tributaries lying between the Watertown Dam and the Charles River Dam. (350 MASS. CODE REGS. § 12.01).

#### Prioritization Scheme

None.

#### Other Pertinent Information

Anyone who grounds or abandons a vessel within the limits of a harbor or upon any property other than his own, or fails to remove the vessel within the time limit designated in a written notice by the Department of Environmental Management, Division of Waterways, is subject to a fine of no more than \$10,000. (MASS. GEN. LAWS ch 91, § 49).

This prohibition does not apply in cases where the vessel has been grounded by reason of accident, emergency, errors of navigation or in order to prevent loss of life or the sinking of the vessel.

Section 49 is enforced by the Department of State Policy and all other officers authorized to make an arrest.

## MICHIGAN

### Definition of a Vessel

**Vessel:** Every description of watercraft used or capable of being used as a means of transportation on water. (MICH. COMP. LAWS § 324.80104(q)).

**Watercraft:** A contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, vessel operated by machinery either permanently or temporarily affixed, scow, tugboat, or any marine equipment that is capable of carrying passengers, except a ferry. (*Id.* § 324.80301(c)).

### Definition of a Derelict/Abandoned Vessel

Michigan does not have a definition of “abandoned vessel.”

The Aboriginal Records and Antiquities Act contains the following definition:

“Abandoned property” means an aircraft; a watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of an aircraft or watercraft; the personal property of the officers, crew, and passengers of an aircraft or watercraft; and the cargo of an aircraft or watercraft, *which have been deserted, relinquished, cast away, or left behind and for which attempts at reclamation have been abandoned by owners and insurers.* Abandoned property also means materials resulting from activities of historic and prehistoric native Americans. (*Id.* § 324.76101(a) (emphasis added)).

### Formal State Program For Abandoned Vessels

Michigan does not have a formal state program addressing abandoned vessels. Two laws currently govern the removal of abandoned vessels. Abandoned vessels of historic value located on Great Lakes bottomlands are protected by the Michigan Aboriginal Records and Antiquities Act (Antiquities Act). Most abandoned vessels, however, probably fall within state’s laws for lost, unclaimed, and abandoned property.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation process in Michigan. Michigan law requires owners of vessels to notify the Secretary of State (SOS) within 15 days if the vessel is destroyed, abandoned, or sold. (*Id.* § 324.80125(1)).

Abandoned watercraft can be claimed by applying for a certificate of title with the SOS. (MICH. ADMIN. CODE r. 281.2204(1)).

The application for title must be accompanied by a certified or true copy of a court order which indicates that the applicant is the legal owner of the watercraft.

A court order is needed to transfer ownership when the vessel does not have properly assigned title, which is what is normally used to transfer ownership. (*See*, Department of State, *FAQs: Vehicles*,

How do I transfer ownership of a watercraft?, <http://www.michigan.gov/sos/0,1607,7-127-48268-88607--F,00.html>).

### Differences Between Commercial and Recreational Vessel Treatment

None.

### Vessel Size Requirements or Limits

None.

### Removal Requirements

None, except that the salvage of vessels located on the bottomlands of the Great Lakes requires a permit from the DEQ. (See below, Specific Location Factors or Limitations)

### Funding Sources

Because there is no formal program in Michigan, there is no dedicated funding source. The Antiquities Act established the Underwater Preserve Fund which may be appropriated to the Department of History, Arts, and Libraries for the development of maritime archaeology and promotion of Great Lakes bottomlands preserves. The Fund may also be used to enforce the Antiquities Act. (*Id.* § 324.76118).

### Lead State Agency

For historic shipwrecks, the lead agencies are the Michigan Department of Environmental Quality, Land and Water Management Division and Department of History, Arts, and Libraries.

For abandoned property, the lead agency is the Secretary of State.

### Insurance Requirements for Vessels

Boat insurance is not required in Michigan, except vessels carrying passengers for hire must carry marine liability insurance for bodily injury. (MICH. ADMIN. CODE r. § 281.3129).

### Disposal Requirements/Guidelines

#### **Abandoned Property – Generally**

A person who finds lost property must report the finding or deliver the property to a law enforcement agency in the jurisdiction where the property is found. (MICH. COMP. LAWS § 434.22).

Property is defined as “anything which is the subject of ownership and is corporeal, tangible, visible, or personal, or that has an exchange value” and thus would include vessels. (*Id.* § 434.21(i)).

If the person wishes to receive the property if it is not claimed by the legal owner, the person should provide the law enforcement agency with contact information.

The disposal of found property by law enforcement agencies depends on its classification.

Found property that is determined to be junk may be disposed of in any manner by the law enforcement agency. (*Id.* § 434.24(4)).

- Junk is defined as any property that does not have any fair market value or worth. (*Id.* § 434.21(f)).

Property of minor value shall be returned to the legal owner when the law enforcement agency is reasonably satisfied of that ownership. (*Id.* § 434.24(8)).

“Property of minor value” means any property whose fair market value is less than the total cost of preparing a property report, plus the costs of storage and disposition, and which is not collectible currency, contraband, currency, evidence, hazardous material, junk, perishable property, or property of major value (*Id.* § 434.21(k)).

If after 3 months the property has not been claimed by the legal owner, the property may be disposed of in any manner by the law enforcement agency.

Property of major value is to be returned to the legal owner when the law enforcement agency is reasonably satisfied of that ownership. (*Id.* § 434.24(7)).

“Property of major value” means any property that is not collectible currency, contraband, currency, evidence, hazardous material, junk, perishable property, or property of minor value. (*Id.* § 434.21(j)).

If the legal owner cannot be located and more than six months has passed since notice was published as required by law, the property can be disposed of pursuant to § 434.26.

- The law enforcement agency must send a notice by first class mail to any known legal owner of property of major value to the last known address of record which contains the following information:
  - The date the property was found;
  - The type of property found;
  - The address where the property is located;
  - The cost of storage per day, if any;
  - A statement that the property must be claimed within 6 months of the date of the letter or the property shall be considered abandoned and disposed as permitted by law; and
  - The name of the law enforcement agency, the address, and the telephone number where the legal owner can obtain the property. (*Id.* § 434.25(1)).

Sec. 434.26(1) provides that unclaimed property of major value may be disposed of by the law enforcement agency as follows:

- Return the property to the finder;

- If the finder of the property cannot be located or does not want the property, the property can be
  - Retained for use by the law enforcement agency;
  - Sold at a public sale and the money from the sale deposited in the general fund of the governmental unit of the law enforcement agency; or
  - Released to a charitable organization.

If a dispute arises regarding the ownership of found property, any person claiming ownership of the property may file a claim in state court. (*Id.* § 434.27(2)).

Upon receipt of the claim of ownership, the court is required to schedule a hearing to be held within 30 days to determine ownership and notify all persons claiming ownership of the property and the law enforcement agency of the date, time, and location of the hearing.

A decision is to be issued within 10 days of the hearing.

A law enforcement agency of a city, village, or township that recovers stolen property or discovers abandoned personal property within the city, village, or township, which is unclaimed for 6 months after recovery or discovery, must report the recovery or discovery of that property to the city or village council or township board of trustees and request authority to either (1) dispose of the property as provided under §§ 434.24 or 434.26 or (2) give the property to the sheriff of the county to dispose of as stolen property as provided by §§ 434.171-174 (public sale). (*Id.* § 434.181).

If the village council or township board of trustees authorizes the law enforcement officer to dispose of the property pursuant to §§ 434.24 or 434.26, the law enforcement officer shall conduct a sale of the property. (*Id.* § 434.182(3)).

The law enforcement officer shall publish a notice in a newspaper of general circulation in the county not less than 5 days before the proposed sale of the property. The notice shall describe the property and shall state the time and place of the public sale at which the property may be purchased by the highest bidder. (*Id.* § 424.182(4)).

Until the date of the sale, the property may be claimed at the office of the law enforcement officer. If ownership of the property is proved, the property shall be turned over to the owner and the sale shall be canceled insofar as the claimed property is concerned.

The proceeds of the sale, after deducting the cost of the sale, are to be deposited in the village or township general fund. (*Id.* § 434.183). If, within 6 months of the sale, the owner of the property files a claim for the property with the village council or township board of trustees and proves a right to the property, the treasurer who received the proceeds of the sale shall pay the owner the amount of the proceeds. (*Id.* § 434.184(1)).

### Specific Location Factors or Limitations

#### **Great Lakes**

Under the Antiquities Act, the State of Michigan has a possessory right or title superior to that of a finder of “abandoned property of historical or recreational value” found on the state-owned bottomlands of the Great Lakes. (MICH. COMP. LAWS § 324.76102(2)).

“Historical value” means value relating to, or illustrative of, Michigan history, including the statehood, territorial, colonial, and historic, and prehistoric native American periods. (*Id.* § 324.76101(f)).

“Recreational value” means value relating to an activity that the public engages in, or may engage in, for recreation or sport, including scuba diving and fishing. (*Id.* § 324.76101(h)).

Recovery, alteration, or destruction of abandoned property in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes bottomlands preserve, is prohibited without a permit issued by the DEQ and the Department of History, Arts, and Libraries. (*Id.* § 324.76107(1)).

The DEQ may establish a Great Lakes bottomland preserve whenever a bottomlands area includes a single watercraft of significant historical value; includes 2 or more abandoned watercraft; or contains other features of archaeological, historical, recreational, geological, or environmental significance. (*Id.* § 324.76111(2)).

- There are currently 11 Great Lakes bottomland preserves. (*See* DEQ, Michigan Underwater Preserve – Sites, [http://www.michigan.gov/deq/0,1607,7-135-3313\\_3677\\_3701-14591--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3313_3677_3701-14591--,00.html)).

Abandoned property recovered without a permit must be turned over to the Department of History, Arts, and Libraries.

### Prioritization Scheme

None.

## MINNESOTA

### Definition of a Vessel

Minnesota uses the term “watercraft.” In general, **watercraft** means any contrivance used or designed for navigation on water, except: (1) a duck boat during the duck hunting season; (2) a rice boat during the harvest season; or (3) a seaplane. (MINN. STAT. § 86B.005 (2008)).

For titling purposes, watercraft is defined in § 86B.820 as “a device used or designed for navigation on water that is greater than 16 feet in length, as defined in § 86B.005,” but does not include:

- A row-type fishing boat of single hull construction, with oar locks and an outboard motor capacity rating of less than 40 horsepower;
- A canoe;
- A kayak;
- A rowing shell or scull;
- A ship’s lifeboat;
- A vessel of at least five net tons documented under 46 C.F.R. § 67.01; or
- A seaplane.

### Definition of a Derelict/Abandoned Vessel

None.

### Formal State Program For Abandoned Vessels

There is no formal program; however, there are scattered statutory provisions regarding the removal of submerged watercraft, notice of abandoned watercraft, and the titling of abandoned watercraft.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

If a watercraft is abandoned, the owner must provide written notice to the Commissioner of Natural Resources on a form prescribed by the Commissioner within 15 days of abandonment. (*Id.* § 86B.401).

### Differences Between Commercial and Recreational Vessel Treatment

None specified, however these definitions and laws are from the statutory provisions governing recreational boating.

### Vessel Size Requirements or Limits

None.

### Removal Requirements

The owner of a submerged vehicles (which include motor vehicles and watercraft as defined in § 86B.005) is responsible for removing the vehicle from state waters, unless the vehicle is permitted or otherwise exempt from removal. (*Id.* § 86B.107).

Within 48 hours of the vehicle entering the water, the owner must report the date and circumstances surrounding the submergence to the sheriff of the county where the water is located.

Removal must be completed within 30 days of the vehicle entering the water or being discovered in the water, unless the owner is notified in writing by the political subdivision having jurisdiction that the removal must be completed sooner. (*Id.*)

Upon request of the political subdivision, the Commissioner may extend the 30-day time period for removal.

The owner is not responsible for removal if the vehicle was used without the owner's knowledge. This includes, but is not limited to, the operation of a vehicle that was under the control of a member of the owner's household.

- If the driver or operator of the vehicle is known, the driver or operator is responsible for removing the vehicle.

If the vehicle is not removed, the political subdivision in whose jurisdiction the lake or watercourse is located must remove the vehicle. (*Id.*)

The owner of the vehicle is subject to a civil penalty of not less than twice nor more than five times the costs incurred by the political subdivision to remove, process, and dispose of the vehicle. Civil penalties may be imposed as well.

A new license may not be issued for a watercraft that has previously been issued a watercraft license by this state unless a notice of abandonment of the watercraft has been given at least one year before the date of application for the license. (*Id.* § 86B.401).

#### Funding Sources

None.

#### Lead State Agency

N/A. Removal is the responsibility of the owners of the abandoned vessels and political subdivisions in which they are located.

#### Insurance Requirements for Vessels

Boat insurance is not required in Minnesota.

#### Disposal Requirements/Guidelines

Ownership of abandoned tangible personal property that is not subject to any other provision may be transferred in certain circumstances. Property that is not claimed within six months of coming into a person's possession is considered abandoned and it becomes the property of the person in possession, after notice to the prior owner. (*Id.* § 345.75).

Notice must be given to the prior owner personally or by certified mail that the six month period has elapsed and ownership will be transferred at the end of an additional 30-day period.

- If the name of the prior owner is not known, and cannot be ascertained with reasonable diligence, published notice must be given for three weeks in the county where the property is located.

The prior owner or another person claiming an interest in the property may petition the district court to stay the transfer of ownership for a reasonable period to allow the removal of the property. The transfer is stayed while the petition is pending before the court.

#### *Specific Location Factors or Limitations*

The removal statute (§ 86B.107) was primarily passed to force people who drive on the Minnesota lakes in the winter to fish, snowmobile, or use ATVs on the ice to remove their vehicles from the ice in a timely manner and provide a way for the local units of government to charge for not doing so. Although boats are included, the wording of the law raises a possibility that boats abandoned on land would not be covered by this statute. (Personal communication with Kim Elverum, MN DNR Boat & Water Safety Coordinator, Aug. 14, 2009).

#### *Prioritization Scheme*

None.

## MISSISSIPPI

### Definition of a Vessel

**Vessel:** Every description of watercraft, other than seaplane on the water, used or capable of being used as a means of transportation on water. (MISS. CODE ANN. § 59-21-3(1)).

### Definition of a Derelict/Abandoned Vessel

Mississippi law refers to “derelict vessels.” “Any vessel submerged in or on the coastal wetlands or submerged in any private or manmade canal, with a navigable connection to coastal wetlands, in excess of thirty (30) days is declared abandoned and a derelict vessel.” (*Id.* § 49-27-71(1)(a)).

A vessel submerged for more than 100 years is not considered derelict.

Regulations issued by the Mississippi Department of Marine Resources (DMR) adopt the same definition. Derelict vessels are “defined as any vessel having remained submerged in or on the coastal wetlands in excess of thirty (30) days.” (43-045-03 MISS. CODE R. § 102).

“Submerged in or on the coastal wetlands” include vessels grounded on the coastal wetlands but not completely submerged.

### Formal State Program For Abandoned Vessels

Mississippi has a formal program to address abandoned vessels. DMR’s Derelict Vessel Removal Program is authorized by MISS. CODE ANN. § 49-27-71 and funded through the state’s Derelict Vessel Fund and Tidelands Trust Fund.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

DMR may remove from coastal wetlands and private or manmade canals with a navigable connection to coastal wetlands derelict vessels and vessels posing a public safety or environmental hazard which have been “relinquished, deserted, or left by the owner with the intentional of abandoning the vessel.” (MISS. CODE ANN. § 49-27-71(1)(a)).

“Coastal wetlands” are defined as “all publicly-owned lands subject to the ebb and flow of the tide; which are below the watermark of ordinary high tide; all publicly-owned accretions above the watermark of ordinary high tide and all publicly-owned submerged water-bottoms below the watermark of ordinary high tide and includes the flora and fauna on the wetlands and in the wetlands.” (*Id.* § 49-27-5(a)).

The owner or operator of the derelict vessel is liable for the restoration of all affected coastal wetlands and all costs associated with the vessel’s removal. (*Id.* § 49-27-71(b)).

If the last known owner or operator of a derelict vessel is ascertainable, the owner or operator is to be notified by certified mail to remove the derelict vessel and restore the affected coastal wetlands within 30 days. (*Id.* § 49-27-71(2)(a)).

The owner of the derelict vessel shall coordinate with the DMR to obtain all necessary permits, if any. (43-000-045 MISS. CODE R. § 100).

If the owner fails to remove the vessel after receiving notice, state courts have jurisdiction to order the removal of the vessel by the owner or operator. The court may, in its discretion, fine the owner up to \$500.00 per day for each day such violation exists. The owner is also liable for reasonable attorneys' fees and court costs. (MISS. CODE ANN. § 49-27-71(3)).

If the owner or operator is unknown or cannot be located after a diligent search, notice of DMR's intent to remove and dispose of the derelict vessel should be given by publication in a newspaper having general circulation in the county where the vessel is located. The notice should be published once a week for 3 consecutive weeks. The vessel may be removed 10 days after the last date of publication. (*Id.* § 49-27-71(2)(b)).

Notice must also be sent by mail to the Mississippi Department of Archives and History for a determination as to whether the vessel is of archaeological, historical, or architectural significance under the state antiquities law. The Department is to respond within 30 days and advise whether the vessel should be preserved. (*Id.* § 49-27-71(2)(f)).

Sunken or submerged vessels in coastal wetlands within any designated navigation channel or within 100 yards of a state, county, or municipal boat boundary may be declared a hazard to navigation. Any sunken or submerged vessel in coastal wetlands that is leaking any hazardous substances, chemicals or fuels may be declared an environmental hazard. Such vessels are subject to immediate removal and disposal by DMR. (*Id.* § 49-27-71(5)).

The owners of a vessel declared a navigation or environmental hazard are liable for the costs associated with the salvage and disposal of the vessel and any damages to the flora and fauna within the coastal wetlands.

*Differences Between Commercial and Recreational Vessel Treatment*

None.

*Vessel Size Requirements or Limits*

None.

*Removal Requirements*

**Environmental Assessment**

Prior to the removal of any derelict vessel, an environmental assessment must be performed to determine the potential impacts to the coastal wetlands. (43-045-08 MISS. CODE R. § 100). The environmental assessment should include the following:

- An assessment of the amount and type of fuels, oils, and coolants on the vessel;
- The presence of any other deleterious substances that may be discharged into the coastal wetlands as a result of the removal of the vessel;

A description of the process to be employed to remove the derelict vessel and the materials identified with minimum impacts to the coastal wetlands; and  
Disposal plan for the deleterious materials removed from the derelict vessel.

Any depressions resulting from the removal of a derelict vessel within 1500 feet of the shoreline must be filled. (*Id.* § 101).

The environmental assessment is considered part of the removal costs that the owner is responsible for. (*Id.*).

### **Removal Upon Request of Municipality or County**

The municipality or county where a derelict vessel is located may remove the derelict vessel or request that DMR contract for its removal. The municipality or county are responsible for the removal costs. If the municipality or county cannot pay, DMR is authorized to cover the removal costs if funds are available. (MISS. CODE ANN. § 49-27-71(2)(c)).

Municipalities and counties are required to coordinate with DMR prior to the removal of derelict vessels to determine permitting requirements. The Mississippi Commission on Marine Resources must receive an official request from the municipality or the board of supervisors where the derelict vessel is located before DMR may authorize the removal of the vessel. (43-045-03 MISS. CODE R. § 103).

The official request must appear on the minutes of the governing authority requesting the removal of the derelict vessel and shall include the following:

- The location of the derelict vessel;
- A detailed description of the derelict vessel;
- A statement that the vessel has been submerged in or on the coastal wetlands in excess of ninety days;
- The names and addresses of any known owners of the derelict vessel; and
- A commitment to pay for all of the costs associated with the removal of the derelict vessel and restoration of the affected coastal wetlands.

Upon request of an official request, the Commission will review the request and either authorize DMR to remove the vessel or notify the requesting agency that the request is deficient.

***Important Note:*** Before 2002, DMR had to wait 90 days before removing a vessel. In 2002, the Legislature amended the Derelict Vessel Act and shortened the waiting period to 30 days. DMR's regulations appear to require a longer waiting period for municipalities and counties wishing to remove vessels. It is not clear whether this is intentional or a typographical error.

### **Funding Sources**

The Mississippi Derelict Vessel Act established the Derelict Vessel Fund to cover the administrative costs and removal costs incurred by DMR for the removal of vessels. (MISS. CODE ANN. § 49-27-71(4)). The Fund may also be used as a match for municipal and county funds to cover the costs of removing additional vessels. Any reimbursed cost of removal and any fines and damages collected in excess of the removal and restoration costs are to be deposited in the Fund.

Funding is also available from the Tidelands Trust Fund, which is comprised of funds derived from the lease of tidelands and submerged lands. (Mississippi Department of Marine Resources, Derelict Vessel Removal, <http://www.dmr.state.ms.us/DMR/Derelict-vessels/derelict.htm> ).

### Lead State Agency

Mississippi Department of Marine Resources

### Insurance Requirements for Vessels

Boat insurance is not required in Mississippi.

### Disposal Requirements/Guidelines

Once the required notice has been given, derelict vessels may be destroyed or otherwise disposed of. Any proceeds from the disposal of the vessel should be applied to offset the cost of removal and restoration of the affected coastal wetlands. (MISS. CODE ANN. § 49-27-71(2)(d).

If the vessel's owner or operator is later identified, the owner or operator is liable for double the cost of the removal of the vessel and restoration of wetlands, attorneys' fees, and court costs. Upon receipt, this money should be used to reimburse DMR and others for the removal and restoration costs. (*Id.* § 49-27-71(2)(e)).

DMR is not liable for any damage result from the removal, sale, or disposal of any vessel declared a derelict or hazardous vessel (*Id.* § 49-27-71(8)).

Derelict vessels are disposed of in an approved landfill. If the vessel has a steel hull, DMR may clean it for use as Artificial Reef material. (Personal communication with Irvin Jackson, Director, DMR Derelict Vessel Removal Program, Aug. 13, 2009).

### Specific Location Factors or Limitations

DMR only has authority to remove derelict vessels from coastal wetlands and private and manmade canals with a navigable connection to coastal wetlands. Mississippi's salvage laws govern the removal of vessels from all other waters.

### **Navigable Streams**

Any person may enter and remove an obstruction to navigation in, across, or over any navigable stream. (MISS. CODE ANN. § 51-1-5).

Navigable streams are "those portions of all natural flowing streams in this state having a mean annual flow of not less than one hundred (100) cubic feet per second, as determined and designated on appropriate maps by the Mississippi Department of Environmental Quality." (*Id.* § 51-1-4(1)).

### Prioritization Scheme

DMR prioritizes removal based on the highest threat. In addition, derelict vessels that are declared a navigation or environmental hazard can be removed immediately by DMR without complying with notice requirements.

*Other Relevant Information*

Boats “which have been relinquished, deserted, or left by the owner thereof with the intention of abandoning the same” in any of the waters or watercourse of the state or in the beds thereof, except for waters of the Mississippi Sound or of the Gulf of Mexico within the jurisdiction and control of the State of Mississippi, are considered the property of the owner of the bed of the stream, or the part thereof, where such property may be found. (*Id.* § 89-17-1).

Landowners may raise, float, or salvage or authorize the raising, floating, or salvaging of such property.

Any person claiming to be the owner of the removed property may file an action in court to recover it. (*Id.* § 89-17-3). In such action, proof that the property was relinquished, deserted, or left for a period of 3 years without any effort being made to salvage such property is prima facie evidence of the intention to abandon. (*Id.* § 89-17-5).

If no bond is posted by either party within 72 hours after the seizure of the property due to the filing of the complaint, the sheriff may sell the boat after posting notice of the time and place of sale at three or more public places in the county. The proceeds of the sale are to be held by the court until a final decision is made. (*Id.* § 89-17-3).

The defendant in the suit (the person who raised, floated, or salvaged the property) is entitled to a lien on such property for the reasonable expense of raising, floating, or salvaging the property. (*Id.*)

## NEW HAMPSHIRE

### Definition of a Vessel

**Vessel:** Boats of all sizes propelled by sail, machinery, or hand, scows, dredgers, shellfish cars, barges, seaplanes, personal watercraft, and craft of every kind, including but not limited to non-displacement craft, used or capable of being used as a means of transportation or storage on water.” (N.H. REV. STAT. ANN. § 12-G:2).

### Definition of a Derelict/Abandoned Vessel

There is no explicit definition of “abandoned vessel.” However, two statutory sections state when a vessel will be deemed abandoned.

Section 12-G:50-a provides, “Any vessel found unattended in a sunken, beached, or drifting condition, or otherwise anchored and unattended in such a manner as to pose a threat to navigation or the safety of the public or other vessels shall be deemed abandoned by the owner.”

Section 270-B:2 provides, “Any boat found unattended in a sunken, beached, or drifting condition shall be deemed abandoned by the owner.”

### Formal State Program for Abandoned Vessels

There is no formal program, however the Department of Safety has removal authority under chapter 270-B and the Pease Development Authority (PDA) has authority to address abandoned vessels located in the state’s ports and harbors.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There is no formal designation process. “Any boat found unattended in a sunken, beached, or drifting condition shall be deemed abandoned by the owner.” (*Id.* § 270-B:2).

In addition, the PDA provisions provide that “Any vessel found unattended in a sunken, beached, or drifting condition, or otherwise anchored and unattended in such a manner as to pose a threat to navigation or the safety of the public or other vessels shall be deemed abandoned by the owner.” (*Id.* § 12-G:50-a).

Owners of a petroleum-powered vehicle that becomes partially or completely submerged in the surface water of the state is required to remove it within 48 hours or as soon thereafter as safety and weather conditions permit. (*Id.* § 485-A:14).

Petroleum-powered vehicles include, but are not limited to, cars, trucks, motorcycles, snowmobiles, motorized boats, off highway recreational vehicles, all terrain vehicles, construction equipment, trains, and airplanes.

The owner must notify the Department of Environmental Services so an investigation can be undertaken regarding possible contamination and to ensure the safe removal of the vehicle.

- Partially or completely submerged vehicles are presumed to be discharging oil into the surface waters of the state and are subject to New Hampshire's oil spill reporting, removal, and strict liability requirements.

#### Differences Between Commercial and Recreational Vessel Treatment

None.

#### Vessel Size Requirements or Limits

None.

#### Removal Requirements

#### **Department of Safety**

It is unlawful for anyone to abandon any boat at any time on the waters of the state. (*Id.* § 270-B:1).

The Department of Safety's Division of Safety Services (DSS) is authorized to impound abandoned boats or to order the removal and storage at a place of safe keeping of any such abandoned boat. All reasonable charges of the impoundment, removal, and storage are a lien against the boat. (*Id.* § 270-B:3).

The Director of DSS must notify the owner, if known, of the fact of such impoundment, removal and storage. (*Id.* § 270-B:4).

- If the abandoned boat is registered in the state, the notification must be mailed to the person identified as the owner on the registration at the address listed on the registration.
- If the boat is not registered, notice is placed on file with the Director of Motor Vehicles and published in a newspaper of general circulation.

The owner of the boat may redeem the boat within 90 days by payment of the fees and release of the lien. (*Id.* § 270-B:5).

No one who impounds, removes, or stores or who is in charge of the storage of any such abandoned boat shall be liable for any damages to the boat arising out of the impoundment, removal, or storage thereof. (*Id.* § 270-B:6).

#### **Department of Environmental Services**

If the owner of a partially or completely submerged petroleum-powered vehicle refuses or fails to remove it as required by § 485-A:14, the Department of Environmental Services may contract for the removal of the vehicle. (*Id.* § 485-A:14).

The owner of the submerged vehicle is strictly liable for the costs of removing the vehicle and the costs of the investigation, containment, cleanup, removal, and corrective measures associated with the discharge.

- The costs are recoverable by the state in an action of debt brought by the attorney general. The state shall impound any submerged vehicle recovered, at the expense of the owner, until all costs incurred by the state have been paid by the owner.

Any person who fails to remove a submerged or partially submerged vehicle is guilty of a violation and agents of the Department of Safety and police officers may issue citations and fines of \$500 for each day the vehicle remains in the water.

### **Pease Development Authority**

The Director of the Division of Ports and Harbor Division of the PDA (DPH Director), the chief harbormaster, or the deputy chief harbormaster may impound or order the removal and storage of any vessel or mooring found to be in violation of § 12-G:50-a (“found unattended in a sunken, beached, or drifting condition, or otherwise anchored and unattended in such a manner as to pose a threat to navigation or the safety of the public or other vessels” or moored without proper permits or permission). (*Id.* § 12-G:52b(I)).

All reasonable charges for the impoundment, removal, and storage become a lien against the vessel.

The DPH Director is required to notify the owner, if known, of the impoundment, removal, and storage.

- If the vessel is registered in the state, notification must be mailed to the person identified as the owner on the vessel registration at the address listed on such registration. In all other cases, notice is placed on file with the Director and published in a newspaper of general circulation.

The owner of the vessel may redeem the vessel within 90 days by payment of all charges and fees incurred by the DPH related to the impoundment, removal, and storage of such vessel or mooring and release the lien.

No person is liable for any damages to the vessel or mooring arising out of the impoundment, removal, or storage thereof.

In addition to any other penalties authorized, illegally moored or anchored vessels (as defined by § 12-G or rules adopted pursuant to that chapter) are subject to the following penalties:

First offense: the offense is a violation and the fine is \$100 if a natural person and \$300 for any other person.

Second offense: the offense is a violation and the fine is \$250 for a natural person and \$500 for any other person.

Third offense: the offense is a class B misdemeanor, and the minimum fine shall be at least \$500 for a natural person and \$1000 for any other person. (*Id.* § 12-G:52-a).

### Funding Sources

Because there is no formal program in New Hampshire, there is no dedicated funding source. However, removal costs and expenses can be recovered through the sale of impounded vessels.

### Lead State Agency

New Hampshire Department of Safety. The Division of Ports and Harbors of the Pease Development Authority (PDA) also has authority when abandoned boats are located in the state's ports and harbors.

### Insurance Requirements for Vessels

Boat insurance is not required in New Hampshire.

### Disposal Requirements/Guidelines

#### **Department of Safety**

Upon expiration of the 90-day period identified in § 270-B:5, the DSS Director may dispose of any unredeemed boat by destroying such boat or by offering such boat for sale at public auction or the Director may retain such boat for use by the state. (*Id.* § 270-B:7).

The purchaser, if the boat is sold, or the state, in the event of retention, shall pay the cost of impoundment, removal, and storage, and shall obtain release of the lien described in § 270-B:3. Any money received by reason of sale of such abandoned boat at public auction shall be deposited in the state's general fund. (*Id.* § 270-B:7).

#### **Pease Development Authority**

Upon the expiration of the 90-day period, the DPH Director may dispose of any unredeemed vessel or mooring by destroying such vessel or by offering such vessel for sale at public auction or the Director may retain such vessel or mooring for use by the state. (*Id.* § 12-G:52b).

The purchaser, if the vessel is sold, or the state, in the event of retention, must pay the cost of impoundment, removal, and storage, and must obtain release of the lien. Any money received by reason of sale of such vessel or mooring at public auction must be deposited in the PDA's Ports and Harbors Fund established in § 12-G:37.

Nothing in this section shall be construed to limit, restrict, or modify in any way authority granted to the Commissioner of the Department of Safety or the DSS Director to remove or impound boats or moorings pursuant to § 270 or § 270-B.

### Specific Location Factors or Limitations

The PDA only has jurisdiction over vessels abandoned in the state's ports and harbors and it is not exclusive. The Department of Safety can also act to remove vessels in ports and harbors.

### Prioritization Scheme

None.

### Additional Information

Boat storage yard owners may place a lien for rental and other reasonable charges for any vessel, boat, or vessel or boat motor abandoned on their premises. (*Id.* § 450-A:5)

After 30 days, the boat storage yard may report the vessel as unclaimed to the nearest police station on a form prescribed by the Department of Safety. The unclaimed vessel report must be filed within 10 days of the expiration of the 30-day period.

90 days after reporting the vessel as abandoned, the boat yard owner may sell the vessel at his place of business at public auction for cash after posting notice of the sale at two or more public places in the town where the property is stored at least 14 days prior to the sale.

The vessel owner may reclaim the vessel before its sale by paying the charges incurred.

Any proceeds of the sale must first be applied to any liens for abandonment and the reasonable expenses incident to the sale. The owner may claim the balance at any time within one year from the date of such sale. If such balance is not claimed within a year, it shall be paid into the state treasury for the use of the state.

## NEW JERSEY

### Definition of a Vessel

**Vessel:** A boat or watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (N.J. STAT. ANN. § 12:7-71).

New Jersey's Abandoned or Sunken Vessels Disposition Law defines "vessel" as "a boat, ship, or any other watercraft, regardless of whether it is, or was, used for recreational, commercial, or industrial purposes, or any other purpose, other than a seaplane on the water, used or capable of being used as a means of transportation on the water ... and includes any trailer used to transport or store it." (*Id.* § 12:7C-8).

This definition of vessel excludes flat-bottom boats, barges, scows, and rafts. The abandonment of these watercraft are dealt with in other sections of the New Jersey statutes, §§ 12:7C-1 – 12:7C-6.

### Definition of a Derelict/Abandoned Vessel

There is no explicit definition of "abandoned vessel." However, New Jersey law states what action will be considered evidence of abandonment.

"If the owner of the vessel fails to claim an impounded vessel and pay the reasonable costs of removal and storage by midnight of the 30th day following impoundment, it shall be prima facie evidence of abandonment and shall establish a rebuttable presumption that the vessel is abandoned." (*Id.* § 12:7C-10).

"A flat-bottomed boat, barge, scow or raft which has remained moored, grounded or otherwise attached or fastened to or upon any public land or waterway or any private property without such consent for a period of more than 20 days shall be prima facie evidence of such abandonment." (*Id.* § 12:7C-1).

### Formal State Program for Abandoned Vessels

The state does not have a formal program, but New Jersey has enacted the "Abandoned or Sunken Vessels Disposition Law."

**Important Note:** *The effectiveness of this law is questionable. According to David Sweeney, NJ DEP, Bureau of Emergency Response, no municipality is currently taking advantage of the authorities provided by the AbV law. (Personal Communication, David Sweeney, Manager, NJ DEP Bureau of Emergency Response, Aug. 31, 2009).*

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

#### **Vessels**

The Abandoned or Sunken Vessels Disposition Law makes it unlawful for any owner to abandon any vessel without permission. (*Id.* § 12:7C-9a).

A vessel left on public land, waterway, or private property without consent for a period of more than seven days, or which is submerged partially or completely into the water for any period of time, may

be impounded if an official or law enforcement officer has reason to believe the vessel has been abandoned. (*Id.* § 12:7C-9(b)(1)).

The vessel may be removed from a municipal waterway by, or at the direction of, the municipality or harbor commission and impounded under the above provision and removed to a storage space, and its registration certificate and registration plates seized. (*Id.* § 12:7C-9(b)(2)).

An incident report must be filed with the New Jersey Motor Vehicle Commission. (*Id.* § 12:7C-9(b)(4)).

The owner is responsible for the cost of the removal and storage of the impounded vessel. (*Id.* § 12:7C-9(b)(3)).

Violations of this section result in a civil penalty of not more than \$1,000 per day. (*Id.* § 12:7C-9(c)(1)).

Municipalities and harbor commissions are authorized to adopt ordinances/resolutions requiring every owner or operator of a vessel that moors or docks in a municipal waterway, or grounds on land under the control of the municipality or harbor commission, to register with a designated official. (*Id.* § 12:7C-9.1).

The registration shall include the length of time the vessel is intended to remain at the location along with the home address and telephone number of the owner or operator of the vessel, and a local address and telephone number where the owner or operator can be contacted.

This section shall not prevent the operator of a vessel from anchoring, grounding, or mooring a vessel when an emergency exists that requires such action to be taken to safeguard the lives of the passengers, the vessel, or the environment.

After a vessel has been moored, grounded, or docked without registration for a period of one week, an enforcement official acting for or on behalf of the municipality or harbor commission, may affix a notice on the vessel advising that if the vessel is not removed by the date indicated on the notice (no less than a seven day period), then the vessel, including any trailer upon which a grounded vessel has been placed, will be removed to a holding area.

- The ordinance or resolution is to designate one or more holding areas, public or private, at which vessels in violation of the registration requirement may be held.

An owner or operator who violates the provisions of such an ordinance or resolution shall be liable to a civil penalty of not less than \$100 nor more than \$1,250. Each day upon which the violation continues shall constitute a separate offense.

### **Flat-bottom Boats, Barges, Scows, and Rafts**

Any abandoned flat-bottomed boat, barge, scow or raft that has been abandoned (for more than 20 days without consent) may be seized and forfeited to the municipality in which the violation occurred. (*Id.* § 12:7C-2)

The municipality must provide written notice to the last known address of the owner of such vessel and post a copy on the vessel stating that unless the vessel is removed within 72 hours the vessel will be forfeited.

90 days after forfeiture, the municipality may sell the boat, barge, scow or raft at auction in a public place, after giving notice of such sale by certified mail to the owner, if his name and address are known, and to the holder of any security interest, and by publication at least 5 days before the date of sale in one newspaper circulating in the municipality where it will be sold. (*Id.* § 12:7C-2).

Differences Between Commercial and Recreational Vessel Treatment

The NJ abandoned vessel law does Act does not distinguish between commercial or recreational vessels. However, there are separate procedures for abandoned flat-bottomed boats, barges, scows or rafts.

Vessel Size Requirements or Limits

None.

Removal Requirements

There are no guidelines on how abandoned vessels are to be removed. Municipalities and law enforcement officials have authority to seize and remove abandoned vessels.

Funding Sources

There is no dedicated legislative funding source, but the costs of removal efforts can be recovered through the sale of abandoned vessels or penalties imposed for violations of the abandoned vessel provisions. Penalties are to be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality. (*Id.* § 12:7C-16). When required by the state, the bonds posted by owners (discussed under Other Relevant Information) are another potential funding source.

Lead State Agency

N/A

Insurance Requirements for Vessels

Boat insurance is not required in New Jersey.

Disposal Requirements/Guidelines

**Vessels**

If the owner of the vessel fails to claim an impounded vessel and pay the reasonable costs of removal and storage within 30 days, the vessel is considered abandoned. (*Id.* § 12:7C-10).

A landowner, his lessee, or his agent, or a municipality or harbor commission, in the case of a municipal waterway, may apply to acquire title to any abandoned vessel on his land or water immediately adjacent to the property.

At any time prior to the final acquisition of title by the applicant, the owner, lessor, or holder of a lien on the vessel may reclaim possession of it upon payment of the reasonable costs of removal and storage of the vessel and any outstanding penalties and court costs assessed against him.

- Lessors or lienholders may reclaim the vessel by paying only the removal costs. In these cases, the owner of the vessel shall be liable for all outstanding costs, fines and penalties.

If a vessel has a boat registration number or other means of identifying the owner, the person or entity desiring to acquire the title, must send a registered letter to the owner or lienholder with notification that if ownership is not claimed and the vessel removed within 30 days, title to the vessel will be applied for. No letter is necessary if the owner or the lienholder cannot be identified. (*Id.* § 12:7C-11).

The person, entity, municipality, or harbor commission desiring to acquire title must also place a notice in a newspaper of general circulation published in the county or municipality where the vessel is located, describing the vessel, its location of abandonment, any identifying number, and must state if the vessel is not claimed and removed within 30 days after the publication date of the notice, the person, entity, municipality, or harbor commission, as the case may be, will apply for title to the vessel. (*Id.* § 12:7C-12).

At the end of the 30-day period the person, entity, municipality, or harbor commission desiring to acquire title shall apply to the court for an order directing the New Jersey Motor Vehicle Commission (Commission) for transfer of title to the vessel. In the event the order is granted, the person, entity, municipality, or harbor commission shall provide the Commission with a copy of the order accompanied by affidavits stating that requirements have been met. (*Id.* § 12:7C-13).

After receiving title, if the applicant desires to remove an abandoned vessel from the applicant's land or the water immediately adjacent thereto, or from a municipal waterway or land owned by the municipality, or to destroy such vessel, any costs incurred by the applicant shall be borne by the previous owner of the vessel, provided that the owner has been identified. (*Id.* § 12:7C-16).

If the previous owner does not pay or reimburse for costs, he or she is liable for a civil penalty up to \$1,000. (*Id.* § 12:7C-16).

If the applicant destroys or otherwise disposes of the vessel after receiving title, the applicant must report that to the Commission within 15 days. (*Id.* § 12:7C-17).

### **Flat-bottom Boats, Barges, Scows, and Rafts**

Abandoned flat-bottomed boats, barges, scows, and rafts may be sold at public auction.

Any time prior to the sale, the owner or other person entitled to possession may redeem the boat, barge, scow, or raft upon payment to the municipality of an amount equal to the actual expense incurred by the municipality in removing such vessel and placing it in a boat storage basin plus 6% interest, or an amount equal to \$10.00 per day for every day from the date of forfeiture, whichever is the greater. (*Id.* § 12:7C-3)

Specific Location Factors or Limitations

None.

Prioritization Scheme

None.

Other Relevant Information

**County Authority**

When notified by residents that a boat, barge, or scow is obstructing free navigation of a river, county governments are empowered to investigate the incident when a boat, barge, or scow is stranded or sunk in a navigable water of the state and left for more than 30 days by the owners or persons in charge of it. (*Id.* § 12:4-5).

If in the county's opinion the boat, barge or scow does or is likely to obstruct navigation, they shall give notice to the owners or persons in charge, if their residence is known, that the boat, barge or scow is a nuisance and must be removed within 30 days. If their residence is unknown, public notice shall be given to the like effect by advertising the same in any newspaper published and circulating in the county where the barge, boat or scow may lie.

If the boat, barge, or scow is not removed within 30 days, the county may declare it a public nuisance and cause it to be removed. (*Id.* § 12:4-6).

They may sell the wreck and cargo at public auction or otherwise to defray the expense of removal, or they may agree with the contractor removing the boat, barge or scow that the same, together with the cargo, shall form the whole or a part of the compensation of the contractor for the removal thereof.

The county is to pay the costs and expense of removal from the county treasury and certify the account to the Division of Navigation of the Department of Conservation. When approved by the Navigation Council, the county should be reimbursed out of any funds appropriated to the Department for such purposes. (*Id.* § 12:4-7).

The amount to be paid out under these provisions, either by the county or the state, for the removal of any one sunken or stranded boat, barge or scow, shall not exceed \$1,000. (*Id.* § 12:4-9).

Any surplus obtained by the sale of the wreck and cargo over and above the costs and expenses of removal, in any one instance, shall be paid into the state treasury. (*Id.* § 12:4-8).

**Bonds**

The state may require the owner of a barge docked in or on the bank of any river for more than 10 consecutive days to post a bond of \$25,000.00 with the municipality, which will be forfeited if the barge sinks or becomes unnavigable. This does not apply to barges, ships, or boats owned or operated by common carriers engaged in interstate or foreign commerce, nor to pleasure craft used on a seasonal basis. (*Id.* § 12:7C-5).

## NEW YORK

### Definition of a Vessel

As defined by N.Y. Nav. Law § 2(6), **vessel** means any floating craft and all vessels belong to one of the following classes:

**Public Vessel:** Every vessel which is propelled in whole or in part by mechanical power and is used or operated for commercial purposes on the navigable waters of the state; that is either carrying passengers, carrying freight, towing, or for any other use; for which a compensation is received, either directly or where provided as an accommodation, advantage, facility or privilege at any place of public accommodation, resort or amusement.

**Residential Vessel:** Every vessel which is used primarily as a residence.

**Pleasure vessel:** Every vessel not within the classification of public vessel or residential vessel. However, the navigation laws do not apply to rowboats, canoes and kayaks except as otherwise expressly provided.

The term “vessel” does not include a crew racing shell. “Crew racing shell” shall mean any shell, gig, barge or other boat designed primarily for practice or racing, propelled by oars or sweeps, in the sport of crew or scull racing conducted by a private or public educational institution, school, academy, college, university or association of any of the preceding, or by an amateur sports club or association or by the United States or International Olympics Committee and shall not include canoes, rowboats or lifeboats.

### Definition of a Derelict/Abandoned Vessel

New York law uses the term “wreck.” “**Wreck**” shall mean any wrecked property, other than an abandoned historic shipwreck. (N.Y. NAV. LAW § 2(34)).

“Abandoned historic shipwreck” shall mean wrecks situated on or under lands owned by the state, in which the state holds title pursuant to the Abandoned Shipwrecks Act of 1987 (43 U.S.C. 2101) or which, by reason of their antiquity, history, architecture, archaeology or cultural value, have state or national importance and are eligible for inclusion on the state register of historic places, and which have been abandoned by the owner of record. The term shall include the wreck, its cargo, and contents. (*Id.* § 2(33)).

Under New York law, “wreck,” “wreck of the sea,” and “shipwrecked goods” are all defined as those goods cast upon land by the sea, and left there, within some county. (*See Baker v. Hoag*, 7 N.Y. 555, 1853 WL 5979 (1853) (holding that a wreck was defined to be such goods as after a shipwreck are cast upon land by the sea, and left there within some county. They were not wrecks so long as they remained at sea in the jurisdiction of the admiralty.)).

### Formal State Program for Abandoned Vessels

New York does not have a formal program for abandoned vessels. Abandoned vessels are governed by the disposition of wrecked property under New York navigation laws. (N.Y. NAV. LAW § 130). Under

these laws, the county sheriff may take possession of the property in the name of the state. This provision does not apply to abandoned historic shipwrecks. (*Id.* § 130-a).

For at least three summers (2000-2002), the Port Authority of New York and New Jersey participated in efforts to remove abandoned motorboats from Jamaica Bay which borders John F. Kennedy Airport. (Jim O’Grady, *Abandoned Boats Sail Off to Their Final Destination*, NEW YORK TIMES, July 14, 2002). Through “Operation Clean Sweep,” an initiative of the National Park Service, abandoned boats were removed by JKF maintenance personnel, crushed, and disposed of in an environmental sound manner at the Port Authority’s expense. (Press Release, Port Authority of New York and New Jersey, *Port Authority Fishes for Abandoned Boats in Jamaica Bay* (June 14, 2002)).

#### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

It is the duty of the sheriff of every county in which any wrecked property is found, when no owner or other person entitled to possession of the property appears, to take all necessary measures for saving and securing it, and to take possession in the name of the people of the state. The sheriff is also charged with causing the value of the property to be appraised by disinterested persons and keeping the property in a safe place to answer the claims of the persons entitled thereto. (N.Y. NAV. LAW § 130).

The sheriff must immediately publish a notice directed to all parties interested, for at least four weeks in succession, in one or more of the newspapers published in the county where the property was saved. The notice must contain a minute description of the wrecked property, and every bale, bag, box, cask, piece, or parcel, and of the marks, brands, letters, and figures on each, and must state where the wrecked property then is, its actual condition, and the name, if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of the vessel, and the place where the vessel then is and the vessel’s actual condition. The expense of publishing the notice is a charge on the property or proceeds to which it relates. (*Id.* § 139).

The owner of wrecked property may claim the property or the proceeds within a year after it has been found and saved. Upon establishing ownership, the owner is entitled to have the court issue an order directing the officer having possession of the property or proceeds to deliver or pay them to him or her, subject to a reasonable salvage and all necessary expenses incurred in the preservation and keeping of the property. (*Id.* § 132).

#### Difference between Commercial and Recreational Vessel Treatment

None.

#### Vessel Size Requirements or Limits

None.

#### Removal Requirements

New York does not have guidelines specifying how wrecks should be removed.

#### Funding Sources

Because New York does not have a formal program, there is no have a dedicated funding source.

Lead State Agency(s)

N/A. Removal is handled by the sheriff of the county in which the property is found.

Insurance Requirements for Vessels (Recreational and Commercial)

Boat insurance is not required in New York.

Disposal Requirements/Guidelines

If no one appears to claim wrecked property within a year, or if the salvage and expenses on the property have not been paid within three months after they have been adjusted, or an action for the recovery of the property has been commenced, the officer who has custody of the property must sell it at public auction. After deducting salvage and expenses which have been adjusted upon due proof, by an order of the court, he or she pays the proceeds of the sale to the state comptroller, pursuant to provisions of the Abandoned Property Law, for the benefit of the parties interested. It will be considered abandoned property paid to the state. (N.Y. NAV. LAW § 138; N.Y. ABAND. PROP. LAW § 1307).

If the wrecked goods are perishable so as to render their sale expedient, the officer having custody must apply by petition to the county or city court where the property is located for an order authorizing the sale. If the court is satisfied that a sale of the property would be most beneficial to the parties interested, the officer having custody of the property sells it at public auction, with the proceeds of the sale, after deducting the expenses allowed by the court, being paid to the treasurer of the county in which the property was found. (N.Y. NAV. LAW § 131).

Specific Location Factors or Limitations

None.

Prioritization Scheme

None.

Other

It is unlawful to keep wrecked goods under New York law. (*Id.* § 139-a).

## NORTH CAROLINA

### Definition of a Vessel

**Vessel:** Every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water. (N.C. GEN. STAT. ANN. § 75A-2.5).

### Definition of a Derelict/Abandoned Vessel

**Abandoned vessel:** A vessel that has been relinquished, left, or given up by the lawful owner without the intention to later resume any right or interest in the vessel. The term does not include a vessel that is left by an owner or agent of the owner with any person or business for the purpose of storage, maintenance, or repair and that is not subsequently reclaimed. (*Id.* § 75A-2.1 (2009)).

The North Carolina Administrative Code adopts the same definition. (*See*, 15A N.C. ADMIN. CODE 10F.0110).

### Formal State Program For Abandoned Vessels

North Carolina has no formal program to address abandoned vessels. North Carolina, at one time, had a pilot program for removal of abandoned vessels in the Neuse River Basin. The program has since expired, but is discussed below under Other Relevant Information.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

North Carolina courts have found that owners of sunken or derelict vessels or their contents may abandon them so effectively as to divest title and ownership. (State ex rel. Bruton v. Flying “W” Enterprises, Inc, 160 S.E.2d 482, 273 N.C. 399 (1968)).

Under North Carolina’s Unclaimed Property Act, personal property that is deemed unclaimed or abandoned is subject to the custody and control of the state if it is tangible and physically located within the state, subject to certain limitations regarding the identity and current or last-known address of the owner. (N.C. GEN STAT. ANN. § 116B -54).

Property is presumed abandoned where there has been no communication from the apparent owner. (*Id.* § 116B-53).

The holder of abandoned property must make a good faith effort to locate the apparent owner. (*Id.* § 116B-59). The notice must contain:

A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and

A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the

property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

In addition, under North Carolina law, “a person may acquire ownership of an abandoned vessel by providing proof to the [North Carolina Wildlife Resources Commission] that the lawful owner has actually abandoned the vessel. The Commission shall adopt rules by which a person seeking to acquire ownership may demonstrate that the vessel is actually abandoned.” (*Id.* § 75A-5.i2). The Commission’s procedures were published as 15A N.C. ADMIN. CODE 10F.0110. (*See also*, [http://www.ncwildlife.org/pg01\\_License/documents/Vessel/AbandonVesselForm.pdf](http://www.ncwildlife.org/pg01_License/documents/Vessel/AbandonVesselForm.pdf)).

Abandonment: A person finding an abandoned vessel can become the registered and titled owner of the vessel, provided the previous owner(s) cannot be located and they have not reported the vessel missing or stolen. The applicant shall comply with the following procedures to seek ownership of such vessel:

- The Finder shall send a Certified Letter, return receipt requested, to the last registered owner(s). The Finder shall demonstrate to Commission that this letter was not deliverable or that the last registered owner(s) failed to acknowledge or respond.
- The Finder shall provide to the Commission a written police report stating that the abandoned vessel has not been reported missing or stolen in the area where it is listed as being moored.
- The Finder shall complete and submit an application for a certificate of number and certificate of title to the Commission, along with a notarized statement summarizing when and where the vessel was found, the evidenced attempts to locate the owner(s), any available evidence that the vessel is abandoned, statements from any other persons knowledgeable about the history of the vessel, and applicable fees.

The Commission shall consider the evidence and documentation presented. If the Commission determines that the vessel has been abandoned, it shall issue a certificate of number and certificate of title to the applicant.

*Differences Between Commercial and Recreational Vessel Treatment*

None.

*Vessel Size Requirements or Limits*

None.

*Removal Requirements*

The Department of Environment and Natural Resources (DENR) is required to cooperate with the U.S. Army Corps of Engineers in removing “any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.” (N.C. GEN. STAT. ANN. § 143-355(b)(5)).

### Funding Sources

North Carolina does not have a dedicated funding source for abandoned vessels.

### Lead State Agency

North Carolina Wildlife Resources Commission is the agency adjudicating abandonment determinations for purposes of new ownership claims. Under the pilot program, the Department of Environment and Natural Resources was the lead agency for removal.

### Insurance Requirements for Vessels

Boat insurance is not required in North Carolina.

### Disposal Requirements/Guidelines

Under North Carolina's unclaimed property laws, property having no substantial commercial value may be destroyed unless the property has historical significance. (*Id.* § 116B-70). Also, where the property has not been claimed in three years, the Treasurer may sell the property at public auction. (*Id.* § 116B-65(a)).

### Specific Location Factors or Limitations

None.

### Prioritization Scheme

None.

### Other Relevant Information

#### **Pilot Program**

North Carolina had a pilot program for the removal of abandoned vessels in Neuse River Basin which ran from July 1, 2000, to January 1, 2003. Under the pilot program, an abandoned vessel was defined as one that has been left unattended for 90 consecutive days or that is in a wrecked, junked, or substantially dismantled condition. The Department of Environment and Natural Resources (DENR) had authority to remove the vessel and restore the site if the owner failed to do so within specified times (15 days after notice for vessel removal, 45 days for site restoration). The owner was responsible for all costs, and DENR could sell the vessel, its cargo, tackle, and equipment to help recover costs. (2000 N.C. SESS. LAWS 74).

#### **Dumping of Waste**

North Carolina prohibits waste material dumping on navigable waters which includes "scrapped vehicle." This could arguably apply to abandoned vessels.

"It shall be unlawful for any person, firm or corporation to place, deposit, leave or cause to be placed, deposited or left, either temporarily or permanently, any trash, refuse, rubbish, garbage, debris, rubble, *scrapped vehicle* or equipment or other similar waste material in or upon any body

of navigable water in this State; “waste material” shall not include spoil materials lawfully dug or dredged from navigable waters and deposited in spoil areas designated by the Department of Environment and Natural Resources; violation of this section shall constitute a Class 2 misdemeanor.” (N.C. GEN STAT. ANN. § 76-4(a))

## OHIO

### Definition of a Vessel

**Vessel:** Every description of craft, including nondisplacement craft and seaplanes, designed to be used as a means of transportation on water.” (OHIO REV. CODE § 1547.01(B)(1)).

### Definition of a Derelict/Abandoned Vessel

Ohio uses the term “abandoned.” A vessel is considered **abandoned** if:

Left on private property, other than a private dock or mooring facility or structure, for at least 72 hours without the permission of the person having the right to the possession of the property. (*Id.* § 1547.30(B)(1)); or

Left on public property in a sunken, beached, or drifting condition for any period of time, or in a docked condition, on a public street or other property open to the public, or upon or within the right-of-way of any waterway, road, or highway, for 48 hours or longer without notification to the sheriff or chief of the reasons for leaving the vessel or motor in any such place or condition. (*Id.* § 1547.301)

**Abandoned Junk Vessel:** Any vessel or outboard motor meeting all of the following requirements:

It is three years old or older;

It is extensively damaged, such damage including, but not limited to any of the following, missing deck, hull, transom, gunwales, motor, or outdrive;

It is apparently inoperable;

It has a fair market value of \$200 or less; and

Has been left

- On private property for at least 72 hours without the permission of the person having the right to the possession of the property;
- In a sunken, beached, or drifting condition for any period of time; or
- In a docked condition, on a public street or other property open to the public, or upon or within the right-of-way of any waterway, road, or highway, for 48 hours or longer without notification to the sheriff of the county, the chief of police of the municipal corporation, township, or township police district, or other chief of a law enforcement agency, having territorial jurisdiction with respect to the location of the vessel or motor, of the reasons for leaving the vessel or motor in any such place or condition. (*Id.* § 1547.303).

### Formal State Program to Address AbV

There is no formal state program in Ohio that manages the removal and disposal of AbVs. A collection of state laws sets forth the procedures for local law enforcement officers and private individuals to remove and claim AbVs.

## Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

Ohio has different procedures for AbVs depending on whether the vessel was abandoned on private or public property.

### **Private Property**

Upon the complaint of any person adversely affected, local law enforcement agencies may order into storage any vessel or outboard motor, except an “abandoned junk vessel,” that has been left on private property, other than a private dock or mooring facility or structure, for at least 72 hours without the permission of the person having the right to the possession of the property. (*Id.* § 1547.30(B)(1)).

### **Public Property**

Local law enforcement agencies may order into storage any vessel, except for an “abandoned junk vessel,” that has been left in a sunken, beached, or drifting condition for any period of time, or in a docked condition, on a public street or other property open to the public, or upon or within the right-of-way of any waterway, road, or highway, for 48 hours or longer without notification to the sheriff or chief of the reasons for leaving the vessel or motor in any such place or condition. (*Id.* § 1547.301)

The sheriff of the county or chief of police shall designate the place of storage of any vessel or motor ordered removed by him.

### **Abandoned Junk Vessels**

The sheriff of a county, chief of police of a municipal corporation, township, or township police district, or other chief of a law enforcement agency, within the sheriff’s or chief’s respective territorial jurisdiction, or a state highway patrol trooper, upon notification to the sheriff or chief of such action, shall order any abandoned junk vessel or outboard motor to be photographed by a law enforcement officer. (*Id.* § 1547.303(B)).

The officer shall record the make of vessel or motor, the hull identification number or serial number when available, and shall also detail the damage or missing equipment to substantiate the value of \$200 or less.

The sheriff or chief shall immediately dispose of the abandoned junk vessel or outboard motor to a marine salvage dealer or other facility owned, operated, or under contract to the state, county, township, or municipal corporation for the destruction of such vessels or motors.

The records and photographs relating to the abandoned junk vessel or outboard motor shall be retained by the law enforcement agency ordering the disposition of the vessel or motor for at least 2 years.

- The law enforcement agency shall execute in quadruplicate an affidavit, as prescribed by the Chief of the Ohio Department of Natural Resources, Division of Watercraft, describing the vessel or motor and the manner in which it was disposed of, and that all requirements of this section have been complied with, and shall sign and file the same with the clerk of courts of the county in which the vessel or motor was abandoned.
- The clerk of courts shall retain the original of the affidavit for the clerk’s files, shall furnish one copy thereof to the Division Chief, one copy to the marine salvage dealer or other

facility handling the disposal of the vessel or motor, and one copy to the law enforcement agency ordering the disposal, who shall file such copy with the records and photographs relating to the disposal.

Any moneys arising from the disposal of an abandoned junk vessel or outboard motor shall be credited to the general revenue fund, or to the general fund of the county, township, municipal corporation, or other political subdivision, as appropriate.

#### Differences Between Commercial and Recreational Vessel Treatment

None.

#### Vessel Size Requirements or Limits

Ohio has no size requirements or limits regarding the removal and storage or disposal of abandoned vessels and abandoned junk vessels.

#### Removal Requirements

Abandoned vessels may be removed from private property only pursuant to §§ 1547.30(B) and 1547.301. (*Id.* § 1547.30(G)).

#### **Private Property**

When a law enforcement agency receives a complaint about a vessel left on private property, it may order the vessel into storage. Upon complaint of the owner of a marine repair facility or place of storage, the law enforcement agency may order into storage any vessel or outboard motor, except for abandoned junk vessels, that has been left at the facility or place of storage for a longer period than agreed upon. (*Id.* § 1547.30(B)(1))

The chief of the law enforcement agency must designate the place where the vessel is to be stored. He must also arrange, when possible, to have the vessel removed by a private towing company.

If the vessel remains unclaimed after 30 days, the procedures for vessels abandoned on public property will govern the storage and disposal of the vessel. (*Id.* § 1547.30(F)(2)).

#### **Private Dock or Mooring Facility**

The owner of a private dock or mooring facility or structure may order any vessel or outboard motor, except for abandoned junk vessels, found moored, anchored, or tied in violation §§ 1547.30(B)(2)(a) – (b) towed into storage, provided that the owner of the dock, facility, or structure posts on it a sign that states that the dock, facility, or structure is private, is visible from all entrances to the dock, facility, or structure, and contains the following:

The information specified in § 1547.30(B)(2)(a) or (b), as applicable;

- Section 1547.30(B)(2)(a) prohibits any person, without the consent of the owner or other person authorized to give consent from mooring, anchoring or tying a vessel or outboard motor at a private dock or mooring facility or structure owned by another person if the owner has posted, in a conspicuous manner, a prohibition against the mooring, anchoring,

or tying of vessels or outboard motors at the dock, facility, or structure by any person not having the consent of the owner or other person authorized to give consent.

- Section 1547.30(B)(2)(b) prohibits the mooring, anchoring, or tying of vessels and outboard motors at a dock, facility, or structure in violation of the posted conditions and regulations.

A notice that violators will be towed and that violators are responsible for paying the cost of the towing;

The telephone number of the person from whom a towed vessel or outboard motor may be recovered, and the address of the place to which the vessel or outboard motor will be taken and the place from which it may be recovered. (*Id.* § 1547.30(B)(2)(c)).

The prohibitions of §§ 1547.30(B)(2)(a) – (b) do not prevent a person from mooring, anchoring, or tying a vessel or outboard motor at a private dock or mooring facility or structure if either of the following applies:

The vessel or outboard motor is disabled due to a mechanical or structural malfunction, provided that the person immediately removes the vessel or outboard motor from the dock, facility, or structure when the malfunction is corrected or when a reasonable attempt has been made to correct it;

Weather conditions are creating an imminent threat to safe operation of the vessel or outboard motor, provided that the person immediately removes the vessel or outboard motor from the dock, facility, or structure when the weather conditions permit safe operation of the vessel or outboard motor. (*Id.* § 1547(B)(2)(d)).

A person whose vessel or outboard motor is towed into storage under § 1547.30(B)(2)(c) either shall pay the costs of the towing of the vessel or outboard motor or shall reimburse the owner of the dock or mooring facility or structure for the costs that the owner incurs in towing the vessel or outboard motor.

If the owner or operator of a vessel that has been ordered into storage arrives after the vessel has been prepared for removal, but prior to its actual removal from the property, the owner or operator shall be given the opportunity to pay a fee of not more than one-half of the charge for the removal of vessels normally assessed by the person who has prepared the vessel or motor for removal, in order to obtain release of the vessel or motor. (*Id.* § 1547(C)).

- Upon payment, the vessel shall be released to the owner or operator, and upon its release, the owner or operator immediately shall move it so that it is not on the private property without the permission of the person having the right to possession of the property, or is not at the facility or place of storage without the permission of the owner, whichever is applicable.

The owner of a vessel that is ordered into storage may reclaim it upon payment of any expenses or charges incurred in its removal, in an amount not to exceed \$200, and storage, in an amount not to exceed \$5.00 per 24-hour period, and upon presentation of proof of ownership, which may be evidenced by a certificate of title to the vessel, certificate of U.S. Coast Guard documentation, or certificate of registration if the vessel is not subject to titling. (*Id.* § 1547(F)(1)).

- If a vessel removed for storage by a law enforcement agency remains unclaimed for 30 days, the procedures established by §§ 1547.301 and 1547.302 shall apply. (*Id.* § 1547(F)(2)).
- If a vessel removed for storage by a private dock owner or mooring facility remains unclaimed for 72 hours after being stored, the tow truck operator or towing company that removed the vessel or outboard motor shall provide notice of the removal and storage to the sheriff of a county, chief of police of a municipal corporation, township, or township police district, or other chief of a law enforcement agency within whose territorial jurisdiction the vessel or outboard motor had been moored, anchored, or tied in violation of § 1547.30(B)(2). (*Id.* § 1547.30(F)(3)).

The notice shall be in writing and include the vessel's hull identification number or serial number, if any; the vessel's make, model, and color; the location from which it was removed; the date and time of its removal; the telephone number of the person from whom it may be recovered; and the address of the place to which it has been taken and from which it may be recovered.

Upon receipt of the notice, the sheriff or chief immediately shall cause a search to be made of the records of the Watercraft Division to ascertain the owner and any lienholder of the vessel, and, if known, shall send notice to the owner and lienholder, if any, at the owner's and lienholder's last known address by certified mail, return receipt requested, that the vessel will be declared a nuisance and disposed of if not claimed within 30 days of the mailing of the notice.

If the owner or lienholder makes no claim to the vessel within 30 days, the sheriff or chief shall file with the clerk of courts of the county in which the place of storage is located an affidavit showing compliance with the above requirements, and the vessel shall be disposed of in accordance with § 1547.302.

### **Public Property**

Upon notification of an abandoned vessel, except abandoned junk vessels, on public property, the sheriff of a county, chief of police of a municipal corporation, township, or township police district, or other chief of a law enforcement agency, within his respective territorial jurisdiction, or a state highway patrol trooper, may order the vessel into storage. (*Id.* § 1547.301).

The sheriff or chief shall immediately cause a search to be made of the records of the Watercraft Division to ascertain the owner and any lienholder of the vessel and, if known, shall send notice to the owner and lienholder, if any, at his last known address by certified mail, return receipt requested, that the vessel will be declared a nuisance and disposed of if not claimed within 10 days.

The owner or lienholder of the vessel may reclaim it upon payment of any expenses or charges incurred in its removal and storage, and presentation of proof of ownership, which may be evidenced by a certificate of title, certificate of U.S. Coast Guard documentation, or certificate of registration if the vessel or motor is not subject to titling.

If the owner or lienholder makes no claim to the vessel within 10 days of the date of mailing of the notice, and

- The vessel is to be disposed of at public auction, the sheriff or chief shall file with the clerk of courts of the county in which the place of storage is located an affidavit showing compliance with the above requirements.
  - Upon presentation of the affidavit, the clerk of courts shall without charge issue a salvage certificate of title, free and clear of all liens and encumbrances, to the sheriff or chief and shall send a copy of the affidavit to the chief of the division of watercraft.
- The vessel or motor is to be disposed of to a marine salvage dealer or other facility, the sheriff or chief shall execute in triplicate an affidavit, as prescribed by the Division of Watercraft, describing the vessel and the manner in which it was disposed of, and that all requirements of this section have been complied with.
  - The sheriff or chief shall retain the original of the affidavit for his records and shall furnish two copies to the marine salvage dealer or other facility. Upon presentation of a copy of the affidavit by the marine salvage dealer or other facility, the clerk of courts shall issue to such owner a salvage certificate of title, free and clear of all liens and encumbrances.
  - A marine salvage dealer or other facility that receives an affidavit for the disposal of a vessel as provided in this section is not required to obtain an Ohio certificate of title to the vessel in his own name if the vessel or motor is dismantled or destroyed and both copies of the affidavit are delivered to the clerk of courts. Upon receipt of such an affidavit, the clerk of courts shall send one copy of it to the Division Chief.

#### Funding Sources

There is no dedicated funding source for removal efforts in Ohio. Any money raised through the disposal of abandoned vessels and abandoned junk vessels is to be credited to the general revenue fund of the entity responsible for the removal and disposal of the vessel.

#### Lead State Agency

N/A. Law enforcement agencies within Ohio's various "municipal corporations, towns or townships" are responsible for arranging the removal and storage or disposal of abandoned vessels and abandoned junk vessels.

#### Insurance Requirements for Vessels (Recreational and Commercial)

Boat insurance is not required by law in Ohio.

#### Disposal Requirements/Guidelines

Unclaimed vessels ordered into storage under §§ 1547.30(B) (AbV on private property) or 1547.301 (AbV on public property) shall be disposed of at the order of the sheriff of the county, the chief of police of the municipal corporation, township, or township police district, or another chief of a law enforcement agency in any of the following ways:

To a marine salvage dealer;

To any other facility owned, operated, or under contract with the state or the county, municipal corporation, township, or other political subdivision;

To a charitable organization, religious organization, or similar organization not used and operated for profit; or

By sale at public auction by the sheriff, the chief, or a licensed auctioneer, after giving notice of the auction by advertisement, published once a week for two consecutive weeks in a newspaper of general circulation in the county. (*Id.* § 1547.302(A)).

Any moneys accruing from the disposition of an unclaimed vessel or motor that are in excess of the expenses resulting from the removal and storage of the vessel or motor shall be credited to the general revenue fund or to the general fund of the county, municipal corporation, township, or other political subdivision, as appropriate. (*Id.* § 1547.302(B)).

Notwithstanding § 1547.301, any vessel meeting the requirements of § 1547.303(A)(1)(c) – (e) which has remained unclaimed by the owner or lienholder for a period of 10 days or longer following notification pursuant to § 1547.301 may be disposed of in the manner proscribed for abandoned junk vessels. (*Id.* § 1547.303(B)).

Those requirements are:

- It is extensively damaged, such damage including but not limited to any of the following: missing deck, hull, transom, gunwales, motor, or outdrive;
- It is apparently inoperable; and
- It has a fair market value of two hundred dollars or less.

Law enforcement agencies are authorized to immediately dispose of abandoned junk vessels to a marine salvage dealer or other facility owned, operated, or under contract to the state, the county, township, or municipal corporation for the destruction of such vessels. (*Id.* § 1547.303(B)).

In addition, under § 4585.31, the owner of any property on which a watercraft valued at less than \$10,000 has been left for six months without permission may sell the watercraft at public auction and recover the owner's maintenance or repair charges, including parts and labor charges and dockage or storage charges, if all of the following conditions are met:

The owner of the property applies for a search of the records of the Division of Watercraft for the name and address of the owner of the watercraft and for a search for any lien or mortgage thereon.

Upon receiving the results of the searches, the owner of the property sends notice by certified mail, return receipt requested, to:

- The last known address of the owner of the watercraft or motor, to remove the watercraft or motor;

- Any lienholder or mortgagee, stating where the watercraft is located and any maintenance or repair charges, including parts and labor charges and dockage or storage charges.
  - If the lienholder or mortgagee fails to redeem the watercraft within 45 days after the return receipt is received by the sender, the lien or mortgage is invalid.
  - The lienholder or mortgagee may, to the extent of the lienholder's or mortgagee's previously secured interest, assert a claim for any amount deposited in the county treasury for the watercraft.

The watercraft or motor remains unredeemed by the owner, lienholder, or mortgagee for 45 days after the return receipts are recovered by the sender.

The owner of the property requests a watercraft dealer certified in accordance with § 1547.543 or an independent marine surveyor and appraiser to appraise the watercraft and secures written confirmation that the fair market value of the watercraft is less than \$10,000.

The owner of the property advertises that the watercraft will be sold at public auction.

- The advertisement of sale shall be published once a week for two consecutive weeks in the auction section of a newspaper of general circulation in the county where the watercraft or motor has been left without permission. The advertisement shall include a description of the watercraft or motor, the name of the owner, and the date, time, and place of the sale.

An auction sale is conducted on the property where the watercraft was left without permission of the owner of the property, at which the highest bidder is the purchaser. The owner of the property shall provide a reasonable period of time prior to the sale for prospective purchasers to examine the watercraft. The owner of the property may bid at the sale.

Immediately after the auction sale, the owner of the property executes an affidavit in triplicate, on a form prescribed by the secretary of state and provided by the clerk of courts, stating:

- That the requirements of this section have been met;
- The length of time that the watercraft or motor was left on the owner's property without permission, as of the date of the auction sale;
- The expenses incurred by the owner of the property in connection with the watercraft or motor as of the date of the auction sale, including the expenses of conducting the sale and, if the property is operated as a place of storage for charge, any accrued dockage or storage charges and any maintenance or repair charges, including parts and labor charges; and
- The name and address of the purchaser of the watercraft or motor at the auction sale and the amount of the purchaser's bid.

Upon payment of the bid price by the purchaser, the owner of the property presents the affidavit in triplicate, the written confirmation of value, and the return receipts to the purchaser of the watercraft or motor.

Although a definition of watercraft is not provided by this chapter of the code, watercraft is defined elsewhere as “any of the following when used or capable of being used for transportation on the water”:

- A vessel operated by machinery either permanently or temporarily affixed;
- A sailboat other than a sailboard;
- An inflatable, manually propelled boat that is required by federal law to have a hull identification number meeting the requirements of the U.S. Coast Guard; or
- A canoe or rowboat. (*Id.* § 1547.01(A)).

The purchaser of any watercraft or outboard motor at an auction sale held pursuant to § 4585.31 may obtain a certificate of title to the watercraft, free of all liens, mortgages, and other encumbrances, if he presents the affidavit in triplicate, written confirmation of value, and return receipts to the clerk of court of the county in which the auction sale was held. (*Id.* § 4585.32).

Any person who sells a watercraft in accordance with § 4585.33 shall pay the money received from the purchaser of the watercraft or motor, less the maintenance or repair charges and dockage or storage charges, to the county treasurer, who shall deposit the net amount into the county treasury. (*Id.* § 4585.33)

The funds deposited into the county treasury shall be paid to the owner of the watercraft or to any lienholder or mortgagee whose lien or mortgage was invalidated pursuant to §4585(B)(2), if the owner, lienholder, or mortgagee asserts a claim for the amount within 1 year after it is deposited in the treasury.

- If the owner, lienholder, or mortgagee does not assert a claim for the amount within 1 year, the county auditor shall transfer the unclaimed funds, or remainder of the unclaimed funds, to the county general fund.

A purchaser in good faith of any watercraft sold at public obtains the watercraft free of any rights of the owner or any lienholder or mortgagee, despite noncompliance by the owner (of the property upon which the watercraft was left) with the requirements of § 4585.31 or 4585.32. (*Id.* § 4585.34).

The owner of the property is liable for damages caused by his failure to comply with these provisions.

#### Specific Location Factors or Limitations

There are different procedural requirements for vessels located on private property versus public property.

#### Prioritization Scheme

None.

## OREGON

### Definition of a Vessel

Oregon's abandoned vessel laws utilize the following terminology: boats, boathouses, and floating homes.

**Boat:** Every description of watercraft, including a seaplane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes. (ORE. REV. STAT. § 830.005(1)).

“Boathouse” means a covered structure on floats or piles used for the protected moorage of boats. (*Id.* § 830.005(2)).

“Floating home” means a moored structure that is secured to a pier or pilings and is used primarily as a domicile and not as a boat. (*Id.* § 830.005(4)).

### Definition of a Derelict/Abandoned Vessel

Oregon does not have an explicit definition of “abandoned vessel.” However, a boat, floating home, or boathouse is considered abandoned when a “person leaves a boat, floating home or boathouse on the waters of this state or upon any public or private property except with the permission of the property owner, or at an established or attended moorage or in any area leased for occupation by the Department of State Lands under [Ore. Rev. Stat.] chapter 274.” (*Id.* § 830.909(1)).

### Formal State Program For Abandoned Vessels

The Oregon State Marine Board manages Oregon's Abandoned Vessel Program. The Program refers to the administrative and fiscal activities of the Board pursuant to §§ 830.907 – 830.927 and 98.245. The Program is funded through registration and title fees on boats, floating homes, and boathouses.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

A boat, floating home, or boathouse is abandoned if left on Oregon waters “or at an established or attended moorage or in any area leased for occupation by the Department of State Lands under [ORE. REV. STAT.] chapter 274.” (*Id.* § 830.909(1)).

The owner of the boat, floating home, or boathouse is considered responsible for the abandonment and is liable for the cost of removal, cleanup, and disposal (*Id.* § 830.909(2)).

Pursuant to Oregon State Marine Board Policy No. 04-01, to be eligible to receive funds through the Abandoned Vessel Fund, a removing authority should notify the Board as soon as possible when a vessel, floating home, or boathouse is discovered to be abandoned.

“Removing authority” means a sheriff's office, a municipal police department, a state police office, a law enforcement agency created by intergovernmental agreement, or a port as defined in Ore. Rev. Stat. §§ 777.005 or 778.005. (*Id.* § 98.245(1)(a)).

Unless immediate removal of the vessel is necessary to prevent imminent environmental damage or risk to public safety, the removing authority must provide the Board with notification prior to removing a vessel or taking it into custody. (Oregon State Marine Board Policy No. 04-01, available at <http://www.oregon.gov/OSMB/docs/PDF-Publications/AbVesselProg.pdf>). The notification should include following information:

- The notification should include, at the time it is made, the name of waterbody; the size of vessel (length, width, height, gross tonnage); the type of threat (environmental threat and/or safety hazard to navigation); name, affiliation, and contact information of reporting individual; and a description of the course of action the removing authority determines is warranted.

Once the Board receives a notification, a reference number is assigned and a case file opened to track the disposition of the abandoned vessel, floating home, or boathouse. (*Id.*)

#### Differences Between Commercial and Recreational Vessel Treatment

None, the Oregon statutes do not distinguish between commercial and recreational boats.

#### Vessel Size Requirements or Limits

Only those expenses associated with the removal and cleanup of abandoned boats of less than 200 gross tons are subject to reimbursement through the Abandoned Boat Removal and Cleanup Subaccount. There are no size limitations for floating homes and boathouses.

#### Removal Requirements

There is no prescribed manner of removal under the Abandoned Vessel Program. (State Marine Board Policy 04-01, at 12).

After providing notice to the owner as required under ORE. REV. STAT. § 830.917, a removing authority may remove a boat, floating home, or boathouse if:

The removing authority has reason to believe the boat, floating home, or boathouse is abandoned; and

- The boat, floating home, or boathouse is left on the waters of this state or upon public or private property for a period in excess of 48 hours without permission of the property owner or authorization by statute or local ordinance. (*Id.* § 830.912(1)).

To take custody of a boat, floating home, or boathouse under § 830.912, the removing authority must provide notice and an explanation of the procedures available for obtaining a hearing under § 830.924 and filing a claim under § 98.245. (*Id.* § 830.917).

Notice is to be given by affixing a notice to the boat, floating home, or boathouse with the required information before the boat, floating home, or boathouse is taken into custody. The notice must state all of the following:

- That the boat, floating home, or boathouse will be subject to being taken into custody and removed by the removing authority if the boat, floating home, or boathouse is not removed before the time set by the removing authority. Unless the boat presents a hazard, the removing authority shall allow a sufficient time before taking the boat into custody to allow a hearing under § 830.924.
- The statute, ordinance or rule under which the removing authority proposes to take custody of the boat, floating home, or boathouse.
- The place where the boat, floating home, or boathouse will be held in custody or the telephone number and address of the removing authority.
- That the boat, floating home, or boathouse, if taken into custody and removed by the removing authority, will be subject to salvage, towing and storage charges and disposition under § 98.245.
- That the boat, floating home, or boathouse will be sold to satisfy the costs of salvage, towing and storage if the charges are not paid.
- That the owner, possessor or person having an interest in the boat, floating home, or boathouse has 5 days, not including holidays, Saturdays or Sundays, to request a hearing before the boat, floating home, or boathouse is taken into custody.
- That the owner, possessor, or person having an interest in the boat, floating home, or boathouse may also challenge the reasonableness of any salvage, towing and storage charges at the hearing.
- The time within which a hearing must be requested and the method for requesting a hearing.

A removing authority is not required to provide notice, if there is no boat, floating home, or boathouse identification number and there is no registration number or other markings through which the State Marine Board could identify the owner. In such circumstances, the boat, floating home, or boathouse may be removed and disposed of as provided in § 98.245. (*Id.* § 830.922).

A person provided notice under § 830.917 or any other person who reasonably appears to have an interest in the boat, floating home, or boathouse may request a hearing to contest the validity of the proposed removal by submitting a request to the removing authority not more than 5 days after the posting of the notice. (*Id.* § 830.924).

The 5-day period does not include holidays, Saturdays or Sundays.

A request for hearing must be in writing and state the grounds upon which the person requesting the hearing believes that the custody and removal is not justified. (*Id.* § 830.924(2)).

Upon a receipt of a request for a hearing, the boat, floating home, or boathouse may not be removed unless it constitutes a hazard. (*Id.* § 830.924(1)).

- The removing authority must set a time for the hearing within 72 hours of the receipt of the request (not including holidays and weekends) and provide notice of the hearing to the person requesting the hearing and to the owners of the boat, floating home, or boathouse and any lessors or security interest holders shown in the records of the State Marine Board, if not the same as the person requesting the hearing. (*Id.* § 830.924(3)).
- A person who fails to appear at a hearing is not entitled to another hearing unless the person provides reasons satisfactory to the removing authority for the person's failure to appear.

If the removing authority finds, after hearing and by substantial evidence on the record, that the custody and removal of a boat, floating home or boathouse was:

- Invalid, the removing authority shall order the immediate release of the boat, floating home, or boathouse to the owner or person with right of possession.
- Valid, the removing authority shall order that the boat, floating home, or boathouse be held in custody until the costs of the hearing and all salvage, towing and storage costs are paid by the party claiming the boat, floating home, or boathouse. If the boat, floating home, or boathouse has not yet been removed, the removing authority shall order its removal. (*Id.* § 830.924(4)).

In addition to determining the validity of the proposed removal, the hearing may be used to determine the reasonableness of any charges that may be imposed for salvage, towing and storage of the boat, floating home, or boathouse. (*Id.* § 830.924(7)).

- Salvage, towing and storage charges set by law, ordinance or rule or that comply with law, ordinance, or rule are considered reasonable.

Hearings may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases under § 183.450. (*Id.* § 830.924(9)).

- The hearings officer at a hearing may be an officer, official, or employee of the removing authority but shall not have participated in any determination or investigation related to taking into custody and removing the boat, floating home or boathouse that is the subject of the hearing. (*Id.* § 830.924(10)).

A removing authority shall provide to the person requesting a hearing a written statement of the results of the hearing.

- The determination of a hearings officer is a final order and is subject to appeal to the circuit court for the county in which the boat, floating home or boathouse is located at the time notice is posted under § 830.917. (*Id.* § 830.924(11)).

A removing authority may immediately take custody of a boat, floating home or boathouse that is disabled, abandoned or left unattended on the waters of this state and that is in such a location as to

constitute a hazard or obstruction to other boats, floating homes or boathouses using the waterway. (*Id.* § 830.914(1)).

A removing authority taking custody of a boat, floating home, or boathouse under § 830.914 must comply with the provisions of § 98.245 for disposition of the boat, floating home or boathouse. (*Id.* § 830.919).

### Funding Sources

Boat, floating homes, and boathouse removals are funding through the Abandoned Boat Removal and Cleanup Subaccount within the Boating Safety, Law Enforcement and Facility Account. (ORE. REV. CODE § 830.926(1)). The State Marine Board refers to the subaccount as the “Abandoned Vessel Fund.”

The subaccount shall consist of funds deposited into the subaccount by the State Marine Board from fees collected pursuant to § 830.790 (boat registration fees) and § 830.850 (floating homes and boathouse certificate of title fees).

The Oregon State Marine Board is authorized by the Oregon Legislature to deposit up to \$150,000 per year into the subaccount.

According to the Oregon State Marine Board Policy No. 4-01 (available at <http://www.oregon.gov/OSMB/docs/PDF-Publications/AbVesselProg.pdf>), each of the following criteria must be met before moneys from the Fund can be used to pay for the costs to remove an abandoned vessel and for associated cleanup.

The abandoned vessel, floating home, or boathouse must be physically located in the water;  
The abandoned vessel, floating home, or boathouse must pose an environmental threat or a safety hazard to navigation;

The abandoned vessel must be less than 200 gross tons.

The Board or the removing authority must be unsuccessful in collecting reimbursement from the owner or the owner’s insurance for the removal of the abandoned vessel, floating home, or boathouse and cleanup expenses.

If the above criteria are met, the Board may use the moneys in the Fund to:

Pay the expenses of the Board in implementing §§ 830.907-830.927, limited to the expenses associated with the removal and cleanup of an abandoned boat of less than 200 gross tons, an abandoned floating home, or an abandoned boathouse; or

Pay a removing authority for no more than 75% of the costs of the removal and cleanup of an abandoned boat of less than 200 gross tons, an abandoned floating home or an abandoned boathouse, including any salvage, towing, storage or disposal costs. (*Id.* § 830.926(3)).

### Lead State Agency

Oregon State Marine Board manages the Abandoned Boat Removal and Cleanup Subaccount.

County sheriffs are responsible for locating the owners and security holders of lost and abandoned boats. (State of Oregon, *Boat Salvage Laws in Oregon*, [http://www.oregon.gov/OSMB/BoatLaws/salvageboats.shtml#Abandonment\\_of\\_a\\_Vessel](http://www.oregon.gov/OSMB/BoatLaws/salvageboats.shtml#Abandonment_of_a_Vessel) ).

### Insurance Requirements for Vessels

Boat insurance is not required by law in Oregon.

### Disposal Requirements/Guidelines

A boat, floating home, or boathouse is subject to disposition under § 98.245 if:

The boat, floating home, or boathouse is not claimed through the procedure outlined in Ore. Rev. Stat. § 98.245 or returned to the owner or person entitled to possession. (*Id.* 830.912(3)); or

A hearing is not conducted under § 830.924 and a boat, floating home, or boathouse taken into custody under § 830.917 is not reclaimed within 60 days after it is taken into custody. (*Id.* § 830.927).

Pursuant to § 98.245, a removing authority may dispose of unclaimed property as follows:

First, the removing authority must prepare an inventory describing the unclaimed property.

Second, the removing authority shall publish a notice of intent to dispose of the unclaimed property described in the inventory. The notice shall be posted in three public places in the jurisdiction of the removing authority, and shall also be published in a newspaper of general circulation in the jurisdiction of the removing authority. The notice shall include a description of the unclaimed property as provided in the inventory, the address and telephone number of the removing authority and a statement in substantially the following form:

- The (removing authority) has in its physical possession the unclaimed personal property described below. If you have any ownership interest in any of that unclaimed property, you must file a claim with the (removing authority) within 30 days from the date of publication of this notice, or you will lose your interest in that property.
- A copy of the notice must also be sent to any person that the removing authority has reason to believe has an ownership or security interest in any of the unclaimed property described in the notice. A notice sent pursuant to this paragraph shall be sent by regular mail to the last known address of the person.

Prior to the expiration of the 30-day notice period, a person may file a claim that presents proof satisfactory to the removing authority that the person is the lawful owner or security interest holder of any property described in that notice. The removing authority shall then return the property to that person.

- If a removing authority fails to return property to a person that has timely filed a claim, the person may file, within 30 days of the date of the failure to return the property, a petition seeking return of the property to the person. If the court grants the petition, the removing

authority shall turn the unclaimed property over to the petitioner in accordance with the order.

Third, unless the removing authority upholds a claim or a court a petition, title to all unclaimed property described in a notice passes to the removing authority free of any interest or encumbrance thereon in favor of any person who has:

- A security interest in the property and to whom the removing authority mailed a copy of the notice; or
- Any ownership interest in the property.

The removing authority may transfer good and sufficient title to any subsequent purchaser or transferee, and the title shall be recognized by all courts and governmental agencies. Any department, agency, or officer of the state or any political subdivision whose official functions include the issuance of certificates or other evidence of title shall be immune from civil or criminal liability when such issuance is pursuant to a bill of sale issued by the removing authority.

*Specific Location Factors or Limitations*

None.

*Prioritization Scheme*

None in the statutes, although according to State Marine Board Policy No. 4.01 only vessels posing an environmental threat or hazard to navigation are eligible for funding from the Abandoned Vessel Fund. This may creates a de facto prioritization scheme.

## PENNSYLVANIA

### Definition of a Vessel

The Pennsylvania Fish and Boat Code defines “vessel” as a boat. (30 PA. CONS. STAT. § 102).

A “boat” is “every description of watercraft constructed or sold for the primary purpose of being used as a means of transportation on the water” excluding (1) surfboards and other similar nonpowered contrivances used primarily as swimming aids; (2) commercial craft subject to federal manning and inspection requirements; and (3) seaplanes. (*Id.*)

A watercraft is “every description of device used on the water or ice or capable of being used as a means of transport on water or ice. The term includes boats, motorboats, iceboats, all terrain or amphibious vehicles when they are operated on water and all such other devices. The term does not include seaplanes.” (*Id.*)

### Definition of a Derelict/Abandoned Vessel

Pennsylvania law refers to abandoned boats, but does provide a definition of “abandoned boat” or abandonment. A boat abandoned on private property or the waters immediately adjacent to such property for at least 3 months can be registered as an abandoned boat. (58 PA. CODE § 93.17(b)).

### Formal State Program For Abandoned Vessels

There is no formal state program that addresses AbV.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There are no laws or guidelines providing criteria for a determination of abandonment.

The destruction, loss, theft or abandonment of a boat titled in Pennsylvania must be reported to the Pennsylvania Boat and Fish Commission (Commission) within 5 days. (*Id.* § 93.110(a)).

The recovery of a boat that is lost, stolen, or abandoned must also be reported to the Commission within 5 days of recovery.

The Commission is authorized to take possession of a boat abandoned on public property or waters or may authorize a salvor to take possession. (*Id.* § 93.17(c)).

Boats left on private property or waters adjacent to such property for more than 3 months can be registered by the landowner as an abandoned boat.

### Differences Between Commercial and Recreational Vessel Treatment

“Commercial craft subject to Federal manning and inspection requirements” are excluded from the definition of “boat.” While the regulations do not suggest different treatment, this definitional exclusion raises a question as to whether the registration and titling provisions discussed below are applicable to such commercial vessels abandoned on public or private property.

### Vessel Size Requirements or Limits

None.

### Removal Requirements

None. However, Pennsylvania does authorize removal by the Commission and allows the finders of vessels on private property to register and obtain title to abandoned boats.

### **Private Property**

The owner, tenant, or agent of property on which a vessel has been abandoned for more than 3 months may register and/or acquire title to the vessel. (*Id.* §§ 93.17 (registration); 93.110 (title)).

To do so, the property owner must provide written notice to the Commission that includes the date and place that the vessel was found as well as the vessel's make, model, year and any other "identifying indicia" such as the hull identification number or registration number.

- Notice to register an abandoned boat can be provided by completing and mailing Form PFBC-R2, "Notice of Intent to Register Boat Abandoned on Private Property" to the Commission, available at [http://www.fish.state.pa.us/images/pages/forms/pfbc\\_r2.pdf](http://www.fish.state.pa.us/images/pages/forms/pfbc_r2.pdf).
- If the vessel has a hull identification number or any other "identifying indicia," the Commission will send a notice by certified mail to the last person to whom the vessel was registered or titled that the boat has been abandoned and that the requester desires to register the boat in his name or acquire title to it.

Upon receipt of a request to register or title an abandoned boat, the Commission will notify the last registrant by certified mail that someone desires to register the boat in his name and if ownership is not claimed and the boat removed within 30 days, the Commission may, upon proper application and payment of fees, register the boat in the name of the person desiring to register it or issue a certificate of title in the name of the person desiring to acquire title.

The notice must describe the make, model, hull identification number and registration number of the boat; state the location where the boat is being held; inform the registrant of his right to reclaim the boat within 30 days upon payment of all registration fees and other applicable charges; and state that failure of the registrant to reclaim the boat is deemed consent to the registration or titling of the abandoned boat in the name of the requester with dissolution of all interests of the prior registrant.

If evidence exists that the boat is registered in another state, the Commission will notify the other state and ask the relevant authority to notify the boat's last registrant.

If the last known registrant does not respond, the Commission will notify the requester of the right to continue the registration or titling process by placing a notice in a newspaper of general circulation published in the county where the boat is located for 3 consecutive days.

If the boat was registered in another state, the requester may proceed when notified by the Commission that the transfer of registration or title is unobjectionable in the other state.

The notice shall describe the boat, its location, the date it was abandoned and any identifying number. The person also shall state in the notice that if the boat is not claimed and removed within 30 days after publication in the newspaper, the person will apply for registration or of title the boat in his/her name.

After the required notices expire and more than 60 days have past since the person first notified the Commission of the desire to register or title the boat, the person may apply to the Commission for registration of the boat.

For cases involving boats registered in other states, the Commission is authorized to extend the 60-day period to 180 days.

The application must be accompanied by a statement made under penalty of law that the boat has been abandoned for at least 3 months; proof that the applicant provided the required notices; and proof that a notice was published in a newspaper.

- The required statement can be made utilizing Form PFBC, Statement of Abandoned Boat, available at [http://www.fish.state.pa.us/images/pages/forms/pfbc\\_r5.pdf](http://www.fish.state.pa.us/images/pages/forms/pfbc_r5.pdf) .

Upon receipt of the required materials and the payment of fees required by law, the Commission will register the boat in the name of the requester or issue a certificate of title.

The application form is available at <http://www.fish.state.pa.us/boatreg.pdf> .

### **Public Waters**

A person finding a boat abandoned on public property or waters (i.e., property or waters under the ownership or control of the Commonwealth of Pennsylvania, its agencies, and political subdivisions), must notify the Commission of the description and location of the boat, as well as the date on which it was found. (*Id.* § 93.17(c)).

Form PFBC-R3, Notice of Abandoned Boat Found on Commonwealth Waters, available at [http://www.fish.state.pa.us/images/pages/forms/pfbc\\_r3.pdf](http://www.fish.state.pa.us/images/pages/forms/pfbc_r3.pdf), can be used to provide notification.

For boats abandoned on lands or waters under the jurisdiction or control of the U.S. government, the federal agency with jurisdiction over those areas must be contacted.

The Commission is authorized to take possession of a boat abandoned on public property or it may authorize a salvor to take possession, provided the salvor is a vehicle salvage dealer as defined in 75 PA. CONS. STAT. § 1337 and holds a current, valid certificate of authorization issued by the Pennsylvania Department of Transportation. (*Id.* § 93.17(c)(1)).

A salvor must notify the Commission in writing within 48 hours of taking possession of an abandoned boat under this provision.

The Commission, after taking possession of an abandoned boat or after receiving notice that a salvor has taken possession of an abandoned boat, shall notify by certified mail, return receipt requested the last known registrant of the boat (*Id.* § 93.17(c)(3)) and all leinholders of record (*Id.* § 93.110(c)(4)).

The notice must describe the make, model, hull identification number and registration number of the boat; state the location where the boat is being held; inform the registrant of his right to reclaim the boat within 30 days after the date of the notice upon payment of all towing and storage charges and all registration fees, and state that failure of the registrant or the lienholders to reclaim the boat is deemed consent to the destruction, sale or other disposition of the abandoned boat with dissolution of all interests of the registrant.

If the identity of the last registrant or lienholder cannot be determined, the contents of the notice may be published three times in a newspaper of general circulation in the area where the boat was found abandoned. The entity with possession of the boat, either the Commission or the salvor, is responsible for the publication of the notice.

45 days after the notice was sent by certified mail or published in a newspaper, the Commission may dispose of the boat if it is in its possession or may authorize the salvor to dispose of the it. (*Id.* §§ 93.17(c)(5)), 93.110(c)(6)).

### Funding Sources

There is no formal abandoned boat program in Pennsylvania and therefore no dedicated funding source. Removal activities, however, may be funded through the proceeds of sales of abandoned boats.

### Lead State Agency

The Pennsylvania Fish and Boat Commission has the authority to issue rules and regulations pertaining to “boats which are junked, destroyed, lost, stolen or abandoned.” (30 PA. CON. STAT. § 5325(a)(12)).

### Insurance Requirements for Vessels

Boat insurance is not required in Pennsylvania.

### Disposal Requirements/Guidelines

An unclaimed abandoned boat found on public waters or property may be sold at public auction if it has value. (*Id.* § 93.17(c)(6)).

The purchaser may apply to the Commission for a title, which shall be free and clear from all previous liens and claims of ownership. (*Id.* § 93.110(c)(7)).

The proceeds from the sale shall first be used to reimburse the Commission or the salvor for the costs of towing, storage, notice, publication, mailing and costs of the auction.

- The remainder is to be forwarded to the Commission. The proceeds must be held for 60 days to allow the last-registered owner to claim them. If the proceeds are not claimed, they shall be deposited in the boat fund for use of the Commonwealth.

If an unclaimed abandoned boat is valueless except for salvage, the salvor in possession must apply to the Commission to register the boat in its name and for a salvor’s certificate of title (*Id.* §§ 93.17(c)(7), 93.110(c)(8)).

Upon issuance of the new registration, the salvor may destroy, dismantle, salvage or recycle the boat and retain any proceeds to offset the costs of towing, storage, notice, publication, and mailing.

Issuance by the Commission of a salvor's certificate of title shall divest all rights, title and interest in the boat of the registered owner and all lienholders.

The state and federal agencies may also register or obtain title to any boat abandoned on areas under their ownership or control by proceeding in the manner set forth by §§ 93.17 and 93.110.

#### Specific Location Factors or Limitations

Boats on Commission property that are abandoned, sunken, obviously unseaworthy or unidentifiable may be impounded by the Commission. (58 PA. CODE. § 53.8(e)).

The district waterways conservation officer shall notify the owner, if known, of the impoundment and the requirement that the boat be removed within 10 days.

Impounded vessels will be sold or destroyed if not claimed by the owner within 3 months.

For vessels sunk in the channel-way of the tidewaters of the Delaware or Schuylkill Rivers, it is the duty of the master warden of the port of Philadelphia to give notice to the owner, master, or other agent having charge thereof, to raise and remove such obstruction within 10 days. (55 PA. CON. STAT. § 341.

The penalty for failing to do so is \$100.

#### Prioritization Scheme

None in the statutes or regulations.

## RHODE ISLAND

### Definition of a Vessel

**Vessel:** Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (R.I. GEN. LAWS § 46-22-2(7)).

### Definition of a Derelict/Abandoned Vessel

Rhode Island has provisions for both “wrecked, sunken, or abandoned vessels” as well as “shipwrecks.” None of those terms is defined in the statutes.

### Formal State Program For Abandoned Vessels

There is no formal state program in Rhode Island addressing abandoned vessels, but Rhode Island has passed abandoned vessel legislation. (See, *id.* §§ 46-6-8 – 46-8-18).

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

There are no guidelines in Rhode Island regarding when or how a vessel becomes abandoned. The Director of the Rhode Island Department of Environmental Management (Department) may remove vessels upon his determination that the vessel “is liable to cause or become, an obstruction to the safe and convenient use of the waters for navigation and other lawful purposes.” (*Id.* § 46-6-8).

It is the duty of the Commissioners of Wrecks and Shipwrecked Goods and harbormasters to give immediate notice to the Department of all shipwrecks occurring in tidewaters and any obstructions existing therein. (*Id.* § 46-6-15).

### Differences Between Commercial and Recreational Vessel Treatment

None.

### Vessel Size Requirements or Limits

None.

### Removal Requirements

#### **Abandoned Vessels**

Upon the determination of the Director of the Department that a wrecked, sunken, or abandoned vessel in the tidewaters of the state is, or is liable to cause or become, an obstruction to the safe and convenient use of the waters for navigation and other lawful purposes, the Department may remove the obstruction or cause it to be removed. (*Id.* § 46-6-8).

The Director is required to give notice in writing to the owner of a vessel, or anyone having an interest in or exercising control over the vessel, to remove the vessel within 30 days. (*Id.* § 46-6-9(a)).

- Notice is deemed sufficient if served upon any one or more of the owners and interested persons by delivering the notice in hand, or by leaving it at the usual place of business, residence, or abode, or by duly mailing it to the post office address of the owner or other person on whom the notice is to be served. (*Id.* § 46-6-9(b)).
- Failure to comply with the notice shall result in a fine of \$100 per day until the obstruction is removed. (*Id.* § 46-6-9(c)).

If the vessel is not removed within the time specified in the notice and in a manner and to a place satisfactory to the Director, or there is no one known upon whom the notice can be served, the Director may remove the vessel, complete the removal, or cause the removal to be done by a third party. (*Id.* § 46-6-10).

The cost and expense of the removal, if not paid by the owner or other person liable, shall be paid out of the State Treasury out of any money appropriated for such activities.

The owner of any vessel or of an interest in any vessel and all persons having or exercising any control over a vessel willfully or maliciously wrecked, sunken, or abandoned and removed pursuant to § 46-6-10 is liable for the costs and expense of the removal, or to repay the cost when paid out of the State Treasury. (*Id.* § 46-6-11).

The provision applies whether the person owned the vessel or an interest in the vessel at the time the vessel first became an obstruction or at any time before the removal is complete.

These costs may be recovered in a civil action brought by the Director in the name of the state against the owner and other liable parties.

- If a person pays more than his or her proportional part of the costs, that person has a claim for contribution against all other parties liable for costs.

An insurer of a vessel, who has paid the loss thereon, is not liable for removal of the vessel or the cost and expense of the removal, unless the insurer has exercised some act of ownership or control over the vessel or received the proceeds of the sale of the vessel. (*Id.* § 46-6-13).

### **Shipwrecks**

The town council of every town in Rhode Island whose territorial limits extend to the seashore, except the town of New Shoreham, must appoint a Commissioner of Wrecks and Shipwrecked Goods. (R.I. GEN. LAWS § 46-10-1).

Upon receiving information of any shipwreck within his or her jurisdiction or finding shipwrecked goods or property worth more than \$20.00 not in the custody of the owner or the owner's agent, the commissioner is authorized to take charge of the property and secure it for the owner. (*Id.* § 46-10-2).

- With respect to shipwrecked goods or property on Block Island, the Director of the Department of Environmental Management exercises the duties of the commissioners. (*Id.* § 46-10-15).

- This authority applies only insofar as the Director is performing the duties and exercising the powers of the former commissioner of wrecks in New Shoreham. (*Id.* § 46-10-29).

Upon finding a wreck or shipwrecked goods, a commissioner is required to take an inventory of the property and deliver it to the owner, agent, or other person lawfully authorized to receive it, provided the commissioner receives reasonable compensation for her services and expenses. (*Id.* § 46-10-4).

- If the parties cannot agree on the amount due, the matter may be submitted to three arbitrators for settlement. The arbitrators are to be selected as follows: one by the commissioner, one by the other party, and one by the two arbitrators already selected. If the parties do not agree to arbitration or are dissatisfied with the arbitrators' decision, a civil action may be filed in state court. (*Id.* § 46-10-5).

After finding a wreck, the commissioner must also place a notice in a daily newspaper published in the city of Providence. If the commissioner fails to provide notice, the owner, agent, or person interested is entitled to recover \$100 from her. (*Id.* § 46-10-8).

- Notice of a wreck on Block Island should be published in the Newport newspapers. Owners can recover \$50.00 from the Director for his failure to do so. (*Id.* § 46-10-24).

Rhode Island's shipwreck laws prohibit anyone from taking, detaining, or intermeddling with shipwrecked property after the arrival of the commissioner, except under the direction of the commissioner or, if they have possession of the property, the owner, agent, or interested person. (*Id.* § 46-10-7).

Violators are subject to a \$1,000 fine. \$500 is to go to the commissioner and \$500 to the person lawfully authorized to receive the property.

### Funding Sources

Because there is no formal program in Rhode Island, there is no dedicated funding source. Abandoned vessel removal activities may be funded from the proceeds of the sale of abandoned vessels.

### Lead State Agency

Rhode Island Department of Environmental Management

### Insurance Requirements for Vessels

Boat insurance is not required in Rhode Island.

### Disposal Requirements/Guidelines

#### **Abandoned Vessels**

If the costs and expenses of removing a vessel which is an obstruction to navigation are not paid or repaid by the owner or other person liable therefore within 10 days after the removal is complete, the Director of the Department may sell the vessel at public or private sale. (*Id.* § 46-6-12).

The net proceeds of the sale shall be paid into the State Treasury and deducted from the amount to be repaid or recovered as provided in § 46-6-11.

### **Shipwrecks**

Within 30 days of taking shipwrecked property into custody, the commissioner may sell it at public auction. (*Id.* § 46-10-9).

If no owner, agent, or other person interested in shipwrecked property claims the property within one year, the commissioner shall render to the town treasurer an inventory of the property and, if sold, an account of all proceeds and expenses. The balance of the account, with all property remaining in the commissioner's hands, should be delivered to the treasurer for the use of the town. (*Id.* § 46-10-11).

The Director of the Department may request that a commissioner of wrecks and shipwreck goods apply property in his or her possession appertaining to a wreck vessel, or the proceeds thereof, as may be necessary to provide for the removal of the vessel. (*Id.* § 46-6-14).

### Specific Location Factors or Limitations

The Department of Environmental Management has authority over abandoned vessels located in the tidewaters of the state. Individual towns have removal authority for shipwrecks located on land within their jurisdictional boundaries.

### **Municipal Harbors**

According to the Rhode Island Coastal Resources Management Council's Guidelines for Development of Municipal Harbor Management Plans, harbor masters of municipal harbors may take custody and control of abandoned vessels located in the coastal waters and harbor areas of their towns and remove, store, or otherwise dispose of them. (04-000-011 R.I. CODE R. § 13(a)).

Reasonable notice of such removal, storage, or disposal should be publicly advertised.

Harbor masters are authorized to assume all the duties and powers of the Commissioner of Wrecks and Shipwrecked Goods as detailed in R.I. GEN. LAWS §§ 46-10-1 – 46-10-13. (*Id.* § 13(b)).

### Prioritization Scheme

None in the statutes or regulations.

## SOUTH CAROLINA

### Definition of a Vessel

**Vessel:** Every description of watercraft, other than a seaplane regulated by the federal government, used or capable of being used as a means of transportation on water. (S.C. CODE ANN. § 50-21-10(25)).

**Watercraft:** Any thing used or capable of being used as a means of transportation on the water but does not include: a seaplane regulated by the federal government, water skis, aquaplanes, surfboards, windsurfers, tubes, rafts, and similar devices or any thing that does not meet construction or operational requirements of the state or federal government for watercraft. (*Id.* § 50-21-10(28)).

**Boat** means a vessel. (*Id.* § 50-21-10(2)).

### Definition of an Derelict/Abandoned Vessel

**Abandoned Vessel:** Any watercraft that has been moored, stranded, wrecked, sinking, or sunk, and has been left unattended for longer than 45 days. A watercraft is not abandoned if it is legally moored or is on private property. (*Id.* § 50-21-10(1)).

Also, South Carolina regulations define abandoned vessel in relation to critical areas (tidelands, coastal waters, and the beach/sand dunes system) as follows:

**Abandoned Vessels/Structures:** Any boat, barge, dock, pier or other structure/vessel in the critical areas that is no longer functional for its primary, intended purpose and for which repair or salvage activity is not actively being pursued. (S.C. CODE ANN. REGS. 30-1(D)(1)).

### Formal State Program for Abandoned Vessels

South Carolina has a formal abandoned vessel removal program. South Carolina's AbV removal program is a multi-pronged effort involving a variety of state agencies and local governments. In 2004, the state created an Abandoned Vessel Removal Task Force that includes the following four agencies: S.C. Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (OCRM), the S.C. Department of Natural Resources (DNR), the U.S. Coast Guard, and the U.S. Army Corps of Engineers. Information about this program can be found at: [http://www.scdhec.gov/environment/ocrm/outreach/vessel\\_removal.htm](http://www.scdhec.gov/environment/ocrm/outreach/vessel_removal.htm).

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

Abandonment of watercraft is unlawful. (S.C. CODE ANN. § 50-21-190 (2008)). There is no formal designation process for determining when a boat is abandoned other than the vessel's conformance with the definitions set forth above (left unattended for longer than 45 days).

Upon seizure of the vessel, OCRM will notify any person claiming interest in the vessel. That person has 60 days to file an action proving his interest in the vessel in the circuit court in the county of seizure. If no action is filed, OCRM may retain the property for official use, transfer the property to another public entity for official use, sell the property at auction, or, if unsafe, destroy the property. (S.C. CODE ANN. § 50-23-205(B)).

### Difference between Commercial and Recreational Vessel Treatment

The seizure and removal authority does not distinguish between commercial and recreational vessels.

### Vessel Size Requirements or Limits

None.

### Removal Requirements

Generally, abandoned vessels may be seized by OCRM. (*Id.* § 50-23-205(A)). Where the owner of the abandoned vessel is known, the owner bears the expense and risk of the removal. (*Id.* § 50-21-190).

OCRM may remove the vessel and notify the owner by certified mail, allowing the vessel owner not less than 30 days to remove the vessel from the department's storage facility. Failure to respond results in forfeiture. (*Id.* § 50-23-205).

Where the abandoned vessel is located within "critical areas," additional provisions apply:

OCRM may require removal of abandoned vessels from the critical area. The owner of the abandoned vessel has 30 days from notification to remove it at his expense.

Any person can remove abandoned vessels whose ownership cannot be established from the critical area at that person's expense.

OCRM may require a permit for the removal of the vessel if the removal process will significantly impact the surrounding marsh environment. (S.C. CODE ANN. REGS. 30-11(E)).

### Funding Sources

OCRM's removal efforts are dependent on the receipt of grant funding. In 2007, OCRM received supplemental funding from the S.C. General Assembly to continue its abandoned vessel removal program. Operations under this phase were slated to begin in early 2008. (*See* [http://www.scdhec.gov/environment/ocrm/outreach/vessel\\_removal.htm](http://www.scdhec.gov/environment/ocrm/outreach/vessel_removal.htm)).

In addition, where a seized abandoned vessel is sold at public auction, the proceeds are deposited in OCRM's Boating Operating Fund for program administration. (S.C. CODE ANN. § 50-23-205(B)).

### Lead State Agency(s)

South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management

### Insurance Requirements for Vessels (Recreational and Commercial)

Boat insurance is not required in South Carolina.

### Disposal Requirements/Guidelines

If the watercraft is determined to be unsafe, the OCRM may destroy the vessel. (S.C. CODE ANN. § 50-23-205(B)(2008)).

OCRM requires that all abandoned vessels be completely removed from coastal waters and disposed in an approved landfill. (Personal communication with Curtis M. Joyner, Coastal Projects Manager, Policy & Planning Division, OCRM, Aug. 14, 2009).

Any intact vessel must be immediately destroyed to prevent future reuse and the potential for another abandonment.

If contractors are used to remove vessels, they are required to submit a spill prevention and recovery plan which includes preventive measures for residual fuel and lubricants and steps to clean and restore the site as humanly possible once the vessels are removed. (*Id.*)

#### Specific Location Factors or Limitations

Vessels found in “critical areas,” defined as tidelands, coastal waters and the beach/sand dunes system, are subject to additional regulations as set forth above. (S.C. CODE ANN. REGS. 30-11(E)(2009)).

#### Prioritization Scheme

None in the statutes. Removal efforts are dependent on the amount of funds available through OCRM’s vessel removal grant program and willing recipients for those funds. According to OCRM, the competitive nature of advertised funding does not really provide an opportunity to prioritize a schedule for the removal of abandoned vessels. OCRM, however, does give preference to those local governments who have not previously participated in a prior effort. In addition, those vessels that pose increased environmental risks are given priority over those that pose less risk. (Personal communication with Curtis M. Joyner, Coastal Projects Manager, Policy & Planning Division, OCRM, Aug. 14, 2009).

#### Other Relevant Information

S.C. CODE ANN. § 50-23-290 provides procedures for obtaining title to abandoned vessels.

Any person coming into possession of a watercraft or outboard motor without proper proof of ownership must apply to the S.C. Department of Natural Resources (Department) for a title. The application must be supported by an affidavit setting forth the circumstances under which the watercraft or outboard motor was acquired. The applicant must attempt to notify the last known titled or registered owner and any lienholder of record by certified mail of the application. The applicant must provide the Department with proof of mailing.

The applicant must publish an advertisement as prescribed by the Department in a newspaper of general circulation in the county of residence of the last known owner of record for three successive issues. If there is no prior owner of record, the advertisement must be published in the county where acquired. Proof of advertising must be submitted to the Department.

30 days after the date of the last advertisement if no claim of interest or ownership is made and the item has not been reported stolen, the Department shall issue a clear title. If the item is reported

stolen, the Department shall dispose of the item according to law. If there is a claim of interest adverse to the applicant, the Department shall not issue a title until the issue is resolved. The parties may apply to a court of competent jurisdiction for resolution.

## TEXAS

### Definition of a Vessel

**Vessel:** Any watercraft, other than a seaplane on water, used or capable of being used for transportation on water. (TEX. PARKS & WILD. CODE § 31.003(2)).

**Boat:** A vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer. (*Id.* § 31.003(1)).

In the Texas Transportation Code, watercraft is defined as “a vessel subject to registration under Chapter 31, Parks and Wildlife Code.” (TEX. TRANSP. CODE ANN. § 683.001(8))

### Definition of a Derelict/Abandoned Vessel

None.

### Formal State Program For Abandoned Vessels

The Texas General Lands Office (GLO) has an Abandoned Vessel and Structure Removal Program. Prior to 2005, the GLO only had the authority to remove abandoned vessels involved in an actual or threatened unauthorized discharge of oil. In 2005, the Texas Legislature enacted H.B. 2096 authorizing the GLO to removal vessels that pose a threat to public health, safety, and welfare, a threat to the environment, or a navigation hazard. The GLO also has the authority to remove derelict vessels from state lands. In addition, law enforcement personnel may take abandoned watercraft into custody.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

The owner of a vessel numbered in Texas must notify the Texas Parks and Wildlife Department (TWPDP) within a reasonable time of the destruction or abandonment of the vessel. (TEX. PARKS AND WILD. CODE § 31.037(a)).

### **General Lands Office**

Under the Texas Oil Spill Prevention and Response Act of 1991 (OSPRA), it is unlawful for a person to leave, abandoned, or maintain a vessel in coastal waters, on public or private lands, or at a public or private port or dock “in a wrecked, derelict, or substantially dismantled condition,” where the GLO Commissioner finds the vessel to be:

- Involved in an actual or threatened unauthorized discharge of oil;
- A threat to public health, safety, or welfare;
- A threat to the environment; or
- A navigation hazard. (TEX. NAT. RES. CODE § 40.108(a)).

The GLO Commissioner is authorized to remove and dispose of such vessels and recover the costs of removal and disposal from the owner or operator. Any recovered costs are to be deposited in the Coastal Protection Fund established by § 40.151. (*Id.* § 40.108(b)).

This section, however, does not impose a duty on the state to remove or dispose of a vessel or to warn of a hazardous condition on state land. (*Id.* § 40.108(f)).

### **Law Enforcement Agencies**

Law enforcement agencies are authorized to take abandoned watercraft found on public or private property into custody. (TEX. TRANSP. CODE § 683.011).

Upon doing so, the agency is required to send notice of abandonment to the last known registered owner and each lienholder recorded under Chapter 31, Parks and Wildlife Code. (*Id.* § 683.012).

- The notice must be sent by certified mail no later than 10 days after the date the agency takes the watercraft into custody or receives a report under § 683.031.
- The notice must specify the year, make, model, and identification number of the item; give the location of the facility where it is being held; inform the owner and lienholder of the right to claim the item within 20 days upon payment of towing, preservation, and storage charges; and state that failure to claim the watercraft is a waiver by that person of all right, title and interest in the item and a consent to the sale of the item at public auction.
- Notice by publication in one newspaper of general circulation in the area where the watercraft was abandoned is sufficient notice if published within 20 days and:
  - The identity of the last registered owner cannot be determined;
  - The registration has no address for the owner; or
  - The determination with reasonable certainty of the identity and address of all lienholders is impossible.

A law enforcement agency taking an abandoned watercraft into custody is entitled to reasonable storage fees. (*Id.* § 683.013).

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

None.

### *Vessel Size Requirements or Limits*

None.

### *Removal Requirements*

#### **General Lands Office**

The Commissioner must comply with the requirements of § 40.254 (Orders and Hearings) before removing or disposing of a vessel. However, a vessel involved in an actual or threatened unauthorized discharge of oil may be removed without hearing. (TEX. NAT. RES. CODE § 40.108(c)).

If the GLO Commissioner concludes after an investigation that there is a need for removal or disposal of a derelict vessel, the Commission is required to issue a preliminary report. (*Id.* § 40.254(b)).

- The preliminary report must state the facts that support the Commissioner’s conclusion and recommend one of the following actions: (1) imposition of penalty, (2) suspension of vessel certificate, (3) removal or disposal of derelict vessel, or (4) any combination of the above. (*Id.* § 40.254(b-1)).

The GLO Commissioner must serve written notice of the preliminary report to the person charged with the violation within 10 days of the issuance of the report. (*Id.* § 40-254(c)).

- The notice must include a brief summary of the findings; a statement of the Commissioner’s recommendations; a statement of the right of the person charged with the violation to a hearing; and a copy of the preliminary report.
- The notice must be given by service in person or by registered or certified mail, return receipt requested (*Id.* § 40.254(c-1)(1)).
  - If personal service cannot be obtained or the address of the person is unknown, notice may be given by posting a copy of the notice on the vessel and by publishing notice in a newspaper with general circulation in the county in which the vessel is located at least two times within 10 consecutive days. (*Id.* § 40.254(c-1)(2)).

The person charged with the violation has 20 days to consent in writing to the report or make a written request for a hearing. (*Id.* § 40-254(d)).

If the person consents or does not respond to the notice within 20 days, the Commissioner may take the recommended action and serve written notice of that decision to the person charged with the violation. (*Id.* § 40-254(e)).

If the person requests a hearing, a hearing must be held by a hearing examiner. Based on the findings of fact and the recommendations of the hearing officer, the Commissioner by order may (1) find that a violation has occurred and assess a penalty; (2) suspend a discharge prevention and response certificate; (3) order the removal or disposal of the derelict vessel; (4) order any combination of these remedies; or (5) find that no violation occurred. (*Id.* § 40-254(f)).

- If the Commission assesses a penalty, suspends a certificate, or orders the removal or disposal of the vessel, the Commissioner should give the person written notice of the Commissioner’s findings; the amount of the penalty or terms of the suspension or removal/disposal; and the person’s right to judicial review of the Commissioner’s order.
  - The person charged with the violation has 30 days to comply with the Commissioner’s order or file a petition for judicial review. (*Id.* § 40-254(g)(1)).

### Funding Sources

Abandoned vessel removal efforts are funded from a variety of sources. The Coastal Protection Fund is the primary source for the GLO’s program. The OSPRA established the Fund to provide the GLO with funds to respond to unauthorized discharges of oil, cleanup of pollution, payment of damages from unauthorized discharges, and erosion response project. The Fund receives money from a variety of

sources, including the proceeds from the sale of vessels removed under § 40.108. The Fund may not exceed \$50 million. (TEX. NAT. RES. CODE § 40.151).

The GLO Commission may also pay the costs of removal of structures, including derelict vessels, from state lands from the special funds established under TEX. NAT. RES. CODE §§ 52.297 (Compensation for Damages from Use of Surface – Oil and Gas) and 53.155 (Compensation for Damages from use of Surface – Minerals) or from funds appropriated by the legislature. (*Id.* § 51.3021(g)).

The removal efforts of law enforcement agencies are funded from the proceeds generated from the sale of abandoned watercraft at public auction.

### Lead State Agency

Texas General Lands Office

### Insurance Requirements for Vessels

Boat insurance is not required in Texas.

### Disposal Requirements/Guidelines

#### **General Lands Office**

OSPR allows the GLO Commissioner to dispose of a vessel removed under § 40.108 “in any reasonable and environmentally sound manner.” (TEX. NAT. RES. CODE § 40.108(d)).

The Commissioner is to give preference to disposal options that generate a monetary benefit from the vessel. If no value can be generated from the vessel, the Commissioner is to select the least costly method.

Proceeds from the sale of the vessel are to be used for removal and disposal costs, and any proceeds in excess of the cost of removal and disposal shall be deposited in the Coastal Protection Fund.

#### **Law Enforcement Agencies**

If an abandoned watercraft taken into custody by a law enforcement agency is not claimed by the owner upon receipt of notice, the agency may sell, transfer, or use the watercraft. (TEX. TRANSP. CODE § 683.014(a)(2)).

On consent of the Texas Parks and Wildlife Department (TPWD), the law enforcement agency may transfer an unclaimed abandoned watercraft to the TPWD for use as part of the state’s artificial reef program or for other uses. (*Id.* § 683.014(d)).

The law enforcement agency is entitled to reimbursement from the proceeds of the sale of an abandoned watercraft for the costs of the auction; towing, preservation, and storage fees; and the cost of publication. (*Id.* § 683.015(a)).

- Any money that remains shall be held for 90 days for the owner or the lienholder of the watercraft. If the proceeds remained unclaimed, the law enforcement agency should deposit them in an account that may be used to cover the costs of future removal efforts.

### Specific Location Factors or Limitations

#### **State Parks**

It is unlawful to leave a boat unattended in a *state park* in such a manner as to create a hazardous or unsafe condition. (31 TEX. ADMIN. CODE § 59.134(w)(2)).

Any boat found parked, stored, or left in a state park in violation of any law or rule may be removed by the TPWD and stored at the owner's expense. (*Id.* § 59.132(c)).

#### **State Lands**

The GLO Commissioner also has the authority to remove and dispose of a facility or structure on land owned by the state if the Commissioner finds the facility or structure to lack the proper easement or lease from the state or be "an imminent and unreasonable threat to public health, safety, or welfare." (TEX. NAT. RES. CODE § 51.3021(a)).

A wrecked, derelict, or substantially dismantled vessel that is moored or left in place for at least 21 days without the consent of the Commissioner is considered a structure for purposes of § 51.3021. (*Id.* § 51.3021(k)).

The decision to remove a structure under § 51.3021 is discretionary. (*Id.* § 51.3021(j)).

Before the Commissioner may remove a structure under § 51.3021 or impose a penalty, the Commissioner must give written notice to the person maintaining, owning, or possessing the structure. (*Id.* § 51.3021(b)). The notice must state that:

The structure is without the proper easement or lease or threatens the public health, safety, or welfare; and

The person must remove the structure within 30 days, if the structure is on state land without a proper lease or easement, or within a reasonable time specified by the Commissioner if an imminent and unreasonable threat to public health, safety, or welfare.

Failure to remove the structure may result in a penalty; removal by the Commissioner and liability for the costs of removal; attachment of a lien to the adjacent littoral property to secure payment of the penalty and costs for removal; or any combination of such remedies; and

The person has 30 days to submit a written request for a hearing.

The notice must be given by service in person or by registered or certified mail, return receipt requested, or if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the notice on the structure and by publishing notice in a newspaper with general circulation in the county in which the structure is located two times within 10 consecutive days. (*Id.* § 51.3021(c)).

The Commissioner must grant a hearing if one is requested. (*Id.* § 51.3021(e)). A final order of the Commissioner may be appealed to the state trial courts.

If the person maintaining, owning, or possessing a structure subject to removal under § 51.3021 does not pay assessed penalties, removal costs, or other assessed fees or expenses within 60 days of the final order, the Commissioner may:

Sell salvageable parts or attachments of the structure to offset those costs;

Record a lien, in the total amount of the penalties, costs, and other fees and expenses assessed, against the adjacent littoral property;

Request the attorney general to institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses remaining unpaid; or

Use any combination of the remedies authorized by law to collect the unpaid penalties, costs of removal, and other fees and expenses assessed on account of the unauthorized structure on state land and its removal by the Commissioner. (*Id.* § 51, 3021(h)).

### Prioritization Scheme

The GLO Commissioner is authorized to establish a system for prioritizing the removal or disposal of vessels or structures under § 40.108. (TEX. NAT. RES. CODE § 40.108(e)). The GLO has not enacted regulations establishing this priority system.

### Other Relevant Information

Fishermen participating in the TPWD's shrimp license buyback program must execute a contract that includes the following terms:

“Section 40.251, Natural Resources Code, provides that any person who intentionally leaves, abandons, or maintains any vessel in a wrecked, derelict, or substantially dismantled condition in violation of Section 40.108, Natural Resources Code, shall be guilty of a Class A misdemeanor. Further, a person who leaves, abandons, or maintains a derelict vessel in violation of Section 40.108, Natural Resources Code, shall be subject to a civil penalty of not less than \$100 or more than \$10,000 per violation for each day of violation, not to exceed a maximum of \$125,000 pursuant to Section 40.251(f), Natural Resources Code. I agree not to abandon or dispose of any vessel in violation of state law. I further acknowledge that money paid to me under the license buyback program may be forfeited to the coastal protection fund established by Section 40.151, Natural Resources Code, if the commissioner of the General Land Office finds that the vessel to which the license applied was abandoned in violation of Section 40.108, Natural Resources Code.” (TEX. PARKS & WILD. CODE § 77.119 (d)).

The GLO Commissioner is authorized to order the forfeiture of any money paid to a person under the shrimp license buyback program if he finds the vessel to which the license was applied was abandoned. Any money forfeited is to be deposited into the Coastal Protection Fund. (*Id.* § 77.119(e)).

## VIRGINIA

### Definition of a Vessel

**Vessel:** Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (VA. CODE ANN. § 29.1-700).

**Watercraft:** Any vessel, other than a seaplane, on the water, propelled by machinery whether or not the machinery is the principal source of propulsion or any sail-powered vessel longer than eighteen feet measured along the centerline. Watercraft which have a valid marine document issued by the United States Coast Guard shall not be included in this definition. (*Id.* § 29.1-712).

### Definition of a Derelict/Abandoned Vessel

None.

### Formal State Program For Abandoned Vessels

Virginia does not have a formal program to address AbVs. A collection of laws address boats and vessels adrift (*See, id.* §§ 55-202 – 55-210) and establish a procedure for acquiring title to a vessel that has been abandoned for more than 60 days (*See, id.* § 29.1-733.1). In addition, the Virginia Marine Resources Commission (Commission) has authority to remove obstructions from state waters. (*See, id.* § 28.2-1210).

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

#### **Marine Resources Commission**

Under § 28.2-1210, the Commission has the authority to remove or require the removal of a vessel “found in or upon the bays, oceans, rivers, streams, or creeks of the Commonwealth in a state of abandonment, in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of such waterway.”

If the identify of the owner is know, the Commission may require the owner to repair or remove the property from state waters.

- It is unlawful for an owner to allow a vessel to be in a state of abandonment and in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of a waterway for more than one week after delivery of notification in person or by certified mail, return receipt requested.
- The Commission and law enforcement officials are required to wait 60 days before issuing a notice if the vessel’s state of abandonment or disrepair was due to the occurrence of a natural disaster or other act of God.

If the owner’s identify remains unknown after a diligent search and the posting of proper notice at the last known address of the owner, if known, the Commission may have the vessel removed after giving notice by publication once in a newspaper of general circulation in the area where the vessel is located.

## Local Governments

Virginia law permits local governments (referred to as “localities” in the statutes) to enact ordinances authorizing the removal of abandoned vessels. (*Id.* § 15.2-909).

Any locality may by ordinance provide that the owners of property within the locality shall, at such times as the governing body may prescribe, remove, repair, or secure any vessel which has been abandoned, might endangered the public health or safety of other persons, or which might constitute an obstruction or hazard to the lawful use of the waters within or adjoining such locality.

- If such property is deemed to be abandoned, the governing body may designate an official to ascertain the lawful owner and have the owner repair, remove, or secure such property.

Localities may also enact ordinance allowing its agents and employees to remove, repair, or secure such vessels, if the owner of the vessel, after reasonable notice and time to do so, has failed to remove, repair, or secure it.

- If the identity of the owner is unknown or unascertainable after a reasonable search and after lawful notice has been made to the last known address of any known owner, the locality may take action after giving notice by publication once week for two weeks in a newspaper of general circulation in the area where the vessel is located.
- If a locality does remove, repair, or secure a vessel after complying with the notice requirements, the cost or expenses are chargeable to the owner and to the extent applicable may be collected by the locality as taxes are collected.
  - Every charge authorized by the local ordinance which remains unpaid shall constitute a lien against the owner’s real property.

Only localities that have enacted ordinances have the authority to remove vessels. A comprehensive search of local ordinances was outside the scope of this research project, however, Loudoun County, Virginia’s Nuisance Ordinance is summarized as an example.

In 1985, Loudoun County enacted Ordinance 85-08, available at <http://www.naco.org/Content/ContentGroups/County/Codes/Miscellaneous/Ms002.doc>

- Ordinance 85-08 authorizes the County to inspect premises to ascertain the existence of nuisance and issue cease and desist orders and notices to abate.
  - Nuisance is defined as “anything unwholesome, dangerous, offensive or unhealthy, which constitutes a menace to the health and safety of the public, or any structure which, due to a structural defect or dilapidation, has become dangerous to life or property.” (LOUDOUN COUNTY, VA, COD. ORDINANCES, ch. 648, § 648.03(g)).
- In addition to being nuisances, vessels that endanger the public health or safety or constitute an obstruction or hazard to the lawful use of the waters in or adjoining the County are defined as obstructions.

- If the County Administrator, after a reasonable search, is unable to identify or ascertain the whereabouts of the lawful owner of property on which an obstruction exists, and after the notice and order for abatement has been sent to the last known post office address of such owner, if known, the County may undertake to repair or remove such obstruction after giving notice by publication once each week for two weeks in a newspaper of general circulation in the area where such property is located. (*Id.* § 648.09).

### **Vessels Adrift**

Section 55-202 authorizes any person to take up a boat or vessel adrift.

The person taking up the adrift vessel must immediately inform the court of her county which will order an appraisal of the vessel and certify the result, with a description of the kind, burden and build of the vessel.

If the vessel is valued at less than \$5.00 and the owner has not appeared following the posting of the appraisal “at the front door of [the] courthouse on the first day of two terms of court next after receiving the certificate [of appraisal],” the person who removed it is entitled to the property. (VA. CODE. ANN. §§ 55-203 and 55-204).

If the vessel is worth more than \$5.00, notice must also be published three times in a newspaper published nearest to the place where the vessel was taken up. If the owner does not appear, the vessel belongs to the person who removed it.

The former owner may at any time after recover the value of the property from the court, minus court fees. (*Id.* § 55.205).

The taker is not liable to the owner for the vessel or its value, if it is lost to the taker without his fault. (*Id.* § 55.206).

If any property, not mentioned in §§ 55-202 (i.e., something other than a boat or vessel) is adrift on state waters and deposited on the lands of any person other than the owner, the landowner shall be deemed and treated as the owner of the property. (*Id.* § 55-207).

After paying the landowner just compensation for proper care, labor, or expense incurred with respect to such adrift property, the owner may enter upon the land and, doing as little injury as possible thereto, remove the property. The owner is liable to the owner for any damaged caused to him by such entry and removal. (*Id.* § 55-208).

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

None.

### *Vessel Size Requirements or Limits*

None.

### *Removal Requirements*

There are no guidelines in Virginia for how an adrift or abandoned vessel should be removed. Anyone is entitled to “take up a boat or vessel adrift.” (*Id.* § 55-202) Landowners may acquire title to boats abandoned on their property for more than 60 days (*Id.* § 29.1-733.1) or sell “drift property” other than boats or vessels deposited on their property for more than 3 months. (*Id.* § 55-209).

### Funding Sources

Removal efforts are funded out of the Marine Habitat and Waterways Improvement Fund. The Fund receives moneys from legislative appropriations and the proceeds of the sale of state-owned marine lands. The Fund is to “be used solely for the purposes of improving marine habitat and waterways, including the removal of obstructions or hazardous property from state waters” as authorized by §§ 15.2-909 (localities) and 28.2-1210 (Marine Resources Commission). (*Id.* § 38.2-1204.2).

### Lead State Agency

The Virginia Marine Resources Commission. In addition, the Virginia Department of Game and Inland Fisheries has authority with respect to acquisition of title to abandoned boats. The Virginia Marine Police has the authority to enforce or assist other agencies in enforcing “laws pertaining to the removal of obstructions and abandoned vessels from the water.” (*Id.* § 28.2-106(A)(4)).

### Insurance Requirements for Vessels

Boat insurance is not required in Virginia.

### Disposal Requirements/Guidelines

#### **Acquiring Title to Abandoned Vessel**

A landowner may acquire title to any vessel abandoned on his land or the water immediately adjacent to his land for a period exceeding 60 days. (*Id.* §§ 29.1-733.1(A) and (B)).

Acquisition of title, under these provisions, divests any other person of any interest in the vessel. (*Id.* § 29.1-733.1(B)).

If the vessel has a registration number, or if there are other means of identifying the owner, the person desiring to acquire title must make a good faith effort to secure the owner’s and the lien holder’s last known address and notify the owner and the lien holder by registered letter that if ownership is not claimed and the vessel not removed within 30 days, he will apply for title to the vessel in his name. (*Id.* § 29.1-733.1(C)).

A notice must also be placed for 3 consecutive days in a newspaper of general circulation published in the county or city where the vessel is located. (*Id.* § 29.1-733.1(D)).

- The notice shall describe the vessel, its location, and any identifying numbers and state that if the vessel is not claimed and removed within 30 days after the first day the notice was published, the person who has placed the notice shall apply to the Department of Game and Inland Fisheries (Department) for title to the vessel.

At the end of the 30-day period, the person seeking to acquire the vessel may apply to the Department for title. (The application form is available at <http://www.dgif.virginia.gov/forms/BOAT/BOAT-001.pdf>). The application must be accompanied by the following:

An affidavit stating that to the best of the applicant's knowledge the vessel has been abandoned for a period of at least 60 days;

Proof that the registered letter required by the Department was mailed at least 30 days prior to application or a detailed explanation of the steps taken to identify the owner and lien holder; and

Proof that a notice was printed in a newspaper as required. (*Id.* § 29.1-733.1(E)).

Upon receipt of the above items and payment of all fees and taxes due, the Department shall issue title to the vessel to the applicant. (*Id.* § 29.1-733.1(F)).

All costs incurred in obtaining title are to be borne by the applicant. (*Id.* § 29.1-733.1(G)).

### **Sale of Drift Property**

If the owner of drift property does not remove or demand the property from the owner of the land upon which it was deposited within 3 months, the landowner may sell the property or convert it to his own use. (*Id.* § 55-209).

The landowner, after deducting a just compensation for proper care, labor, or expenses incurred from the amount received from the sale (or the actual value at the time of the conversion), shall pay the owner of the property the residue of the price or actual value.

If the landowner refuses to pay after the property owner demands such residue and proves ownership, the property owner is entitled to recover the residue through the courts.

- In any action with respect to drift property, the person claiming to be the owner must prove his ownership in order to sustain the claim. (*Id.* § 55-210).

### *Specific Location Factors or Limitations*

None.

### *Prioritization Scheme*

None.

## WASHINGTON

### Definition of a Vessel

**Vessel:** 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. (WASH. REV. CODE § 79.100.010(7)).

### Definition of a Derelict/Abandoned Vessel

Washington distinguishes between abandoned and derelict vessels.

**Abandoned Vessel:** 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 30 consecutive days or for more than a total of 90 days in any 365-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. (*Id.* § 79.100.010(1)).

For the purposes of this definition only, “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.

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

- Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to § 79.02.300 or rules adopted by an authorized public entity;
- Has been left on private property without authorization of the owner; or
- Has been left for a period of seven consecutive days, and:
  - Is sunk or in danger of sinking;
  - Is obstructing a waterway; or
  - Is endangering life or property. (*Id.* § 79.100.010(5)).

A new DNR anchorage rule became effective on March 14, 2009. The rule requires that vessels mooring or anchoring over state-owned aquatic lands for more than 30 consecutive days, or more than 90 days within a year’s period within a five mile radius, must obtain a use authorization from DNR. (WASH. ADMIN. CODE § 332-52-155). The failure to obtain such authorization brings them within the statutory definition of derelict.

Washington State’s definitions of abandoned and derelict are intentionally broad so as to encompass trespassing vessels even if they may not pose immediate threats of sinking. (Email from Melissa Montgomery, Program Manager, Washington State Derelict Vessel Removal Program to Stephanie Showalter, Director, National Sea Grant Law Center (Aug. 17, 2009) (on file with NSGLC)).

### Formal State Program For Abandoned Vessels

The Washington Department of Natural Resources operates a derelict vessel removal program that provides funding and expertise to help public agencies remove and dispose of abandoned boats.

Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

The primary responsibility to remove a derelict or abandoned vessel belongs to 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)).

It is a criminal misdemeanor to cause a vessel to become derelict or abandoned in Washington. (*Id.* § 79.100.110).

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 its jurisdiction. (*Id.* § 79.100.030). Authorized public entities may enter into contracts with private companies and individuals to carry out this authority. (*Id.* § 79.100.070).

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 ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located. (*Id.* § 79.100.010(3)).

“Aquatic lands” means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities. (*Id.* § 79.100.010(2)).

Before an authorized public entity may take the actions authorized by § 79.100.030 it must obtain custody of the vessel. (*Id.* § 79.100.040(1)). To do so, the entity must:

Mail notice of its intent to obtain custody, at least 20 days prior to taking custody, to the last known address of the previous owner to register the vessel in any state or with the federal government and to any lien holders or secured interests on record. 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 or federal agency.

Post notice of its intent clearly on the vessel for 30 days and publish its intent at least once, more than 10 days but less than 20 days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and

Post notice of its intent on the DNR’s website on a page specifically designated for such notices.

All notices sent, posted, or published in accordance with this section 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 prevent custody being taken, the procedures the owner must follow in order to reclaim possession, and the financial liabilities that the owner may incur. (*Id.* § 79.100.040(2)).

Authorized public entities may tow, beach, or otherwise take temporary possession of an abandoned or derelict vessel if it is in immediate danger of sinking, breaking up, or blocking navigational channels or poses a reasonably imminent threat to human health or safety, including a threat of environmental

contamination and the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel. (*Id.* § 79.100.040(3)(a)).

***Important Note:*** A vessel may meet the requirements of a temporary possession without strictly meeting the definition of “abandoned” or “derelict” if it has been there for less than 7 days. According to Washington Derelict Vessel Removal Program’s manager, this should be corrected if any state chooses to copy Washington’s statute.

Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the DNR or the U.S. Coast Guard to ensure that other remedies are not available.

The basis for taking temporary possession of the vessel must be set out in writing by the authorized public entity within 7 days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable.

- If the authorized public entity has not already provided the required notice, immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions outlined above. The authorized public entity must complete these notice requirements before using or disposing of the vessel as authorized in § 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. (*Id.* § 79.100.120(1)).

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

None.

#### *Vessel Size Requirements or Limits*

Vessels must be under 200’ (*Id.* § 79.100.010(7)). In practice, funding often limits the removal of vessels longer than 100’. (Email from Melissa Montgomery, Program Manager, Washington State Derelict Vessel Removal Program to Stephanie Showalter, Director, National Sea Grant Law Center (Aug. 17, 2009) (on file with NSGLC)).

#### *Removal Requirements*

There are no specific guidelines on how a vessel should be removed. Vessel may be disposed of in “any appropriate and environmentally sound manner.”

#### *Funding Sources*

The Derelict Vessel Removal Program’s funding comes from a variety of sources but is primarily funded by a \$2.00 fee on annual recreational vessel registration and a \$5.00 fee added to the cost of obtaining a foreign vessel identification document (i.e. for non-Washington boaters staying an extended period in Washington). Section 79.100.100 established the Derelict Vessel Removal Account within the state treasury. Effective January 1, 2008 through January 1, 2014, an additional \$1.00 fee is

placed on annual vessel registration fees. All proceeds from the sale and disposal of vessels or their parts are also to be placed in the account. The fund also has received special appropriations from the state's General Fund and watercraft excise tax in past fiscal years, though that is not a consistent source of funding. The account is also eligible to receive grants and gifts.

DNR is to use funds from the Account to reimburse authorized public entities for up to 90% of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. (*Id.* § 79.100.100(1)).

Funds in the Account resulting from transfers from the general fund or from the deposit of funds from the watercraft excise tax shall be used to reimburse 100% of these costs and should be prioritized for the removal of large vessels.

Costs associated with removal and disposal of an abandoned or derelict vessel under the authority granted in § 53.08.320 also qualify for reimbursement from the derelict vessel removal account.

In a two-year period, up to 20% of the expenditures may be used for administrative expenses of the Department of Licensing and DNR in implementing the abandoned vessel laws.

#### Lead State Agency

Washington Department of Natural Resources

#### Insurance Requirements for Vessels

Boat insurance is not required in Washington.

#### Disposal Requirements/Guidelines

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. (WASH. REV. CODE § 79.100.050(1)).

Preference is to be given to uses that derive some monetary benefit from the vessel, either in whole or in scrap. If no value can be derived from the vessel, the authorized public entity must give preference to the least costly, environmentally sound, reasonable disposal option.

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. Scuttling or sinking of a vessel is only permissible after obtaining the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur, and obtaining all necessary state and federal permits or licenses. (WASH. REV. CODE § 79.100.030(1)).

If the authorized public entity chooses to offer the vessel at a public auction, either a minimum bid may be set or a letter of credit may be required, or both, to discourage future reabandonment of the vessel. (*Id.* § 79.100.050(2)).

Proceeds derived from the sale of the vessel must first be applied to any administrative costs that are incurred by the authorized public entity during the notification procedures, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. If the proceeds derived from the vessel exceed these costs, the remaining moneys must be applied to satisfying any liens registered against the vessel. (*Id.* § 79.100.050(3)).

Any value derived from a vessel greater than all liens and costs incurred reverts to the derelict vessel removal account established in § 79.100.100.

The owner of an abandoned or derelict vessel is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel. (*Id.* § 79.100.060).

An authorized public entity that has taken temporary possession of a vessel may require that all reasonable and auditable costs associated with the removal of the vessel be paid before the vessel is released to the owner.

Reimbursement for costs may be sought from an owner who is identified subsequent to the vessel's removal and disposal.

If the full amount of all costs due to the authorized public entity is not paid within 30 days after first notifying the responsible parties of the amounts owed, the authorized public entity or the DNR may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity.

### Specific Location Factors or Limitations

Local agencies (cities and counties) have regulatory jurisdiction over private land and if they want to they can take the lead on vessel removals on private land. However, if an abandoned or derelict vessel is located on privately owned aquatic lands, and the owner of the vessel is not known or cannot be located, the owner, operator, or lessee of the moorage facility or the owner of the aquatic lands has the primary responsibility for the removal of the vessel. 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. (Washington Department of Natural Resources, Derelict Vessel Removal Program Guidelines, § 3.1 (2007), *available at* [http://www.dnr.wa.gov/Publications/aqr\\_dv\\_guidelines\\_0907.pdf](http://www.dnr.wa.gov/Publications/aqr_dv_guidelines_0907.pdf) ).

According to WASH. ADMIN. CODE § 308-93-275(2)(a), a vessel abandoned on land may be disposed of by one of the following:

- The lost and found property laws in WASH. REV. CODE ch. 63.21;
- The unclaimed property in hands of city police (WASH. REV. CODE ch 63.32);
- Unclaimed property in the hands of Washington state patrol (WASH. REV. CODE ch 63.35); or
- Unclaimed property in hands of sheriff (WASH. REV. CODE ch 63.40).

### **Moorage Facilities**

Port-owned (public) moorage facility operators are authorized to adopt rules setting forth procedures authorizing moorage facility personnel to move moored vessel ashore for storage if the vessel is, in the

opinion of the port personnel a nuisance, in danger of sinking or creating other damage, or the owner owns port charges. (*Id.* § 53.08.320(2)).

Any costs incurred in removing the vessel are to be paid by the vessel's owner. If the owner is not known, or unable to reimburse the moorage facility operator for the costs of these procedures, the mooring facility operators may seek reimbursement of 75% of all reasonable and auditable costs from the Derelict Vessel Removal Account. (Note that the 75% is a relic from when the Derelict Vessel Statute was a 75/25 reimbursement split.)

The owner of a vessel moved ashore for storage may regain possession by making arrangements for the vessel's immediate removal or making payment for all port charges or posting a sufficient bond. (*Id.* § 53.08.320(3)).

If a vessel secured under these provisions is not released to the owner within 90 days after notification, the vessel is conclusively presumed to have been abandoned. (*Id.* § 53.08.320(4)).

If a vessel moored or stored at a moorage facility is abandoned, the moorage facility operator may authorize the public sale of the vessel. Either a minimum bid may be established or a letter of credit may be required, or both, to discourage the future reabandonment of the vessel. (*Id.* § 53.08.320(5)).

- Before the vessel is sold, the owner of the vessel is to be given at least 20 days notice of the sale if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of port charges owed with respect to the vessel. The notice of sale shall be published at least once, more than 10 but not more than 20 days before the sale, in a newspaper of general circulation in the county in which the moorage facility is located. Such notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The moorage facility operator may bid all or part of its port charges at the sale and may become a purchaser at the sale.

Before the vessel is sold, any person seeking to redeem an impounded vessel may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of the port charges owing. Such lawsuit must be commenced within 10 days of the date the notification was provided or the right to a hearing shall be deemed waived and the owner shall be liable for any port charges owing the moorage facility operator. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

The proceeds of a sale shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility operator within one year of the date of the sale, the excess funds from the sale shall revert to the Derelict Vessel Removal Account. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the moorage facility operator.

Private mooring facilities have similar removal authority under § 88.26.020 but they are not eligible for reimbursement out of the derelict vessel removal account under that statute.

### **Marinas**

A marina owner may contract with a local government for the purpose of participating in the derelict vessel removal program. (*Id.* § 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 DNR and any additional reasonable administrative costs incurred by the local government during the removal of the derelict vessel.

- Prior to the commencement of any removal which will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the DNR for review and approval.

### Prioritization Scheme

The Washington Legislature requires DNR 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. (*Id.* § 79.100.100(3)).

When pending grant applications or anticipated demand for derelict vessel remedial action grants exceed the amount of funds available, DNR may prioritize applications or limit grant awards based on the following:

Relative risk to human health and the environment;  
Evidence that the grant will expedite cleanup; and  
Relative readiness of the applicant to proceed promptly to accomplish the scope of work. (WASH. ADMIN. CODE § 173-322-120(4)(b)).

Funding criteria, however, do not determine the order in which vessels are removed. (DNR Guidelines at § 5.1). DNR removes vessels in order of funding priority. Other agencies do not have to follow this prioritization but if there is competition for the funds, they will be reimbursed in priority order.

### Other Relevant Information

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 notice is to be given personally, or in writing. If in writing, it shall be served upon the owner, or may be sent by mail to the post office where such owner usually receives his or her letters. Such

notice shall inform the party where the vessel was taken up, and where it may be found, and what amount the taker-up or finder demands for his or her charges. (*Id.* § 79A.60.240).

In all cases where the notice is not given personally, it shall be the duty of the taker-up to post at the post office nearest the place where such vessel may be taken up, a written notice of the taking up of such vessel. The written notice shall contain a description of the vessel, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up. (*Id.* § 79A.60.250).

- If the taker-up is traveling upon waters of the state, such notice shall additionally be posted up at the first post office he or she shall pass after the taking up.
- In all cases, the person who took up the vessel shall at the time when, and place where, he or she posts such notice, also mail a copy of such notice, directed to the postmaster of each post office on waters of the state, and within 50 miles of the place where such vessel is taken up.

Every person taking up any vessel so found adrift, and giving the notice herein required, shall be 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. (*Id.* § 79A.60.260).

If the person has not substantially complied with the notice provisions within 10 days of the taking up, the person shall be entitled to no compensation. He or she shall be liable to all damages the owner may have suffered, and be also liable to the owner for the value of the use of the vessel, from the time of taking it up until the same is delivered to the owner.

If the parties cannot agree on the amount to be paid the taker-up or the owner, the owner may file a complaint in court. (*Id.* § 79A.60.270).

If the taker-up uses the vessel more than is necessary to put it into a place of safety, he or she shall be liable to the owner for such use, and for all damage. If the vessel suffers injury from his or her neglect to take suitable care of it, he or she shall be liable to the owner for all damage. (*Id.* § 79A.60.280).

In cases where the vessel is worth less than \$100.00 and remains unclaimed for three months, the taker-up may apply to a district judge of the district where the property is for sell of the vessel. If the worth of the vessel exceeds \$100.00 and remains unclaimed for more than 6 months application shall be made to the superior court of the county, but the same procedures are followed. (*Id.* § 79A.60.290).

The judge, upon being satisfied that due notice has been given and the owner cannot be found, shall order the vessel to be sold.

The taker-up shall be paid such sum as he or she shall be entitled to, and the costs, the balance shall be paid the county treasurer as is provided in the case of the sale of estrays.

## WISCONSIN

### Definition of a Vessel

**Boat or Vessel:** Every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water and a fishing raft. (WIS. STAT. ANN. § 30.50(2)).

### Definition of a Derelict/Abandoned Vessel

None.

### Formal State Program For Abandoned Vessels

There is no formal program to address abandoned vessels in Wisconsin, only a collection of laws. Municipalities are authorized to remove obstructions to navigation. The Wisconsin Department of Natural Resources (Department) can take action to abate public nuisances, which include obstructions to navigable waters.

### Laws/Guidelines on How a Boat is Designated as Abandoned/Derelict

Although Wisconsin does not have an abandoned vessel law, Wisconsin law prohibits the abandonment of a boat in traffic lanes and obstructions to navigation are considered public nuisances.

It is unlawful for any person to anchor, place, affix or abandon any unattended boat, raft, float or similar structure in the traveled portion of any river or channel or in any traffic lane established and legally marked, so as to prevent, impede or interfere with the safe passage of any other boat through the same. (WIS. STAT. ANN. § 30.68(8)).

“Every dam, bridge or other obstruction constructed or maintained in or over any navigable waters” is declared by law to be a public nuisance. (*Id.* § 31.25).

Public nuisances may be prohibited by court injunction or abated by a legal action brought by any person. (*Id.* § 30.294).

County district attorneys, at the request of the Department, shall institute proceedings to abate any nuisance committed under Wisconsin’s harbor and navigation laws. (*Id.* § 30.03(2)).

If the Department learns of a possible violation of the statutes relating to navigable waters or a possible infringement of the public rights related to navigable waters and determines that the public interest may not be adequately served by the imposition of a penalty or forfeiture, the Department may order a hearing. (*Id.* § 30.03(4)(a)).

- The hearing examiner may issue an order directing the responsible parties to perform or refrain from performing acts in order to fully protect the interests of the public in the navigable waters.

- If any person fails or neglects to obey an order, the Department may request that the attorney general institute proceedings for the enforcement of the Department's order.

#### Differences Between Commercial and Recreational Vessel Treatment

None.

#### Vessel Size Requirements or Limits

None.

#### Removal Requirements

There are no guidelines for how vessels obstructing navigable waters are to be removed.

The governing body of any municipality may have any watercraft or float obstructing or interfering with the free navigation of any river, canal, water channel or slip within its harbor removed to a convenient and safe place. (*Id.* § 30.16).

The municipality must first give reasonable notice to the master, owner, or agent, if known and a resident of Wisconsin, or the person in charge of the vessel that instructs them to remove the vessel.

The municipality may by ordinance or resolution authorized a harbormaster or other public officer to remove the obstruction and prescribe that person's duties with respect to removal.

- An exhaustive search of local ordinances in Wisconsin was outside the scope of this research project. For an example of how one county exercised its authority under § 30.16, see Kenosha, Wisconsin's Code of Ordinances § 19.055, available at <http://www.kenosha.org/departments/court/ordinances/chapter19.pdf>.

All costs, charges, and expenses of such removal are a first lien on the watercraft or float. The owner is also personally liable for such costs, charges, and expenses.

#### Funding Sources

None, although municipalities can recover removal costs from the owners of the abandoned vessel.

#### Lead State Agency

N/A

#### Insurance Requirements for Vessels

Boat insurance is not required in Wisconsin.

#### Disposal Requirements/Guidelines

The Wisconsin statutes do not contain any provisions on how vessels removed as an obstruction to navigation should be disposed of. However, any personal property abandoned on any lands belonging to the state and unclaimed for more than 60 days may be returned to the person finding the property or sold at private or public sale by the state agency with jurisdiction over the place where the property was found. (*Id.* § 20.909(1)).

The proceeds from such sales, after deducting the necessary expenses for keeping and selling the property, should be paid into the state treasury and credited to the school fund.

In addition, political subdivisions (city, village, town, or county) may dispose of any private property that has been abandoned or remains unclaimed for more than 30 days after an officer of the subdivision has taken possession of the property by any means determined in the best interest of the political subdivision. (*Id.* § 66.0139(2)).

If the property is not disposed of through a public sale, the political subdivision shall maintain an inventory of the property, a record of the date and method of disposal, including the consideration received for the property, if any, and the name and address of the person taking possession of the property. Any means of disposal other than public auction must be specified by ordinance.

If the disposal is in the form of a sale, the proceeds from the sale, after deducting the necessary expenses of keeping the property and conducting the sale, shall be paid into the treasury of the political subdivision.

*Specific Location Factors or Limitations*

None.

*Prioritization Scheme*

None.