

Review of State Abandoned and Derelict Vessel Programs



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Introduction

Grounded and abandoned vessels are a problem in many coastal areas in the United States. There are a number of reasons for vessel abandonment. In some cases, severe storms have a large impact. Derelict and sunken vessels are a common problem in ports around the U.S. that are subject to hurricanes and tropical storms. Vessels that are commercially obsolete may also be abandoned, especially in areas with boom and bust fisheries or oil exploration. Regardless of the underlying reasons for abandonment, these vessels can have significant and diverse impacts on the coastal environment including increased oil pollution, marine debris, and wildlife entrapment. They become hazards to navigation, illegal dumping of waste oils and hazardous materials and general public health hazards. They also decrease public and private use of intertidal and subtidal habitats and result in physical crushing of the substrate (especially a problem in areas with corals and sea grasses).

Following a National Action Plan published by the U.S. Coral Reef Task Force in 1999 that documented habitat damage and other issues resulting from vessel groundings and abandonment, the National Oceanic and Atmospheric Administration (NOAA) implemented the Abandoned Vessel Program (AVP). The main objective of the AVP is to investigate problems posed by abandoned and derelict vessels in U.S. waters. Information on removal assistance and education elements is available on the Abandoned Vessel Program website: <http://response.restoration.noaa.gov/vessels/>.

The purpose of this report is to review the programs, policies, legislation, and funding sources used by individual states and local governments to address abandoned vessels. We conducted a phone and internet-based survey of thirty-six states and territories to gather the information presented in this document. While a few inland states were contacted, the majority of states and territories surveyed border the Atlantic Ocean, Pacific Ocean or the Great Lakes. Management of abandoned vessel issues varies by state and depends on local interpretation, motivation, and action. Appendix A includes detailed information for each state regarding the topics discussed below.

This report is a brief summary of abandoned vessel laws and programs. Furthermore, state and local solutions to abandoned and derelict vessels continue to evolve and many jurisdictions are actively pursuing new legislation. Individuals interested in details on specific abandoned vessel programs and authorities should consult directly with the relevant state and federal agencies.

Definitions and State Examples

Although abandoned and derelict vessels are a pervasive problem in coastal areas, there are differences in how such vessels are treated under state laws. For example, the definitions of the terms “vessel”, “abandonment” and “ownership” vary significantly in the legislative codes of individual states. This is important because tightly worded or specific definitions of “abandonment” or “vessel” successfully exclude certain watercraft from established removal processes or funding opportunities. In other states, legislation may not address “abandonment” of a vessel specifically. In these cases, authorities must use other laws including those relating to property, harbors and waterways, environmental protection, and transportation. Below are some examples of definitions of vessel, abandonment, and ownership from different states.

Definition of a Vessel or Watercraft:

North Carolina: Ch/Sec. 75A-2. "'Vessel" means 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."

Washington: DOE, Title 317. "Any boat, ship, vessel, barge or other floating craft of any kind."

Definitions of Abandonment:

New Jersey: Ch/Sec.12: 7C-8. "A vessel 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 6 months shall be prima facie evidence of such abandonment."

South Carolina: Ch/Sec. 30-11 SC ADC 30-11. "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."

Definitions of Ownership:

Alaska: Ch/Sec. 05.25.100. "'Owner" means a person who has a property interest other than a security interest in a boat and the right of use or possession of the boat; "owner" does not include a lessee unless the lease is intended as security."

Minnesota: Ch/Sec. 86B.107. "'Owner" means the registered owner, last registered owner, or legal owner of a vehicle if the vehicle is not registered."

Primary Causes of Abandonment and Reasons for Legal Action

Numerous circumstances result in the abandonment of vessels. Some of the most common are:

- Storm events, particularly hurricanes/typhoons. The majority of vessels surveyed by the AVP in the Caribbean in 2002 and in the Pacific in 2003 grounded or sunk during severe storm events. In 2005, Gulf Coast hurricanes Katrina and Rita caused extensive damage to coastal communities and resulted in massive numbers of vessel groundings, abandonments, and related debris;
- Community-wide economic stress/change (e.g., declining commercial fishing industries in villages and small towns);
- Financial issues of individual owners;
- Recreational vessel owners that live at a distant location and are not available for maintenance or monitoring;
- Accidental groundings;
- High cost of proper vessel disposal;
- Vessels awaiting scrapping or surplus, including ex-government vessels, that are abandoned when the costs to refit become too high, or scrap metal prices drop.

State and local authorities may choose to take action to identify ownership and remove an “abandoned” vessel for many reasons, including:

- Fuel or other hazardous materials potentially onboard;
- Use of the vessel as an illegal dump site;
- Navigational hazard or obstruction of a public or private-use area;
- Blockage of wharfs, piers, and boat ramps;
- Ecological/environmental considerations;
- Structural hazard and/or public nuisance;
- Aesthetic impact to image and economy of local area (e.g., marina/harbor with several vessels abandoned following a hurricane);
- Infringement of property rights;
- Illegal storage or mooring (e.g., refusal or inability to pay required fees); and
- Violation of personal or corporate property rights (e.g. abandonment on or blocking access to private property).

Federal Involvement

Existing Federal laws and regulations provide less than optimal authority to promptly remove vessels that do not threaten to disrupt navigation or release pollutants. Laws governing responses to polluting or potentially polluting wrecks and/or navigation hazards are described in Table 1.

Table 1. Federal Acts relevant to potentially polluting wrecks and/or navigation hazards.

Federal Act	Vessel Location	Primary Focus	Authority
Wreck Act: incorporated into Rivers and Harbors Act of 1899, 33 U.S.C. §§ 409, <i>et seq.</i>	Navigable channels of the U.S. (interpreted broadly)	Vessels as obstructions or endangerments to navigation	USACE has removal authority; owner liable for costs
Abandoned Barge Act of 1992 (ABA) 48 U.S.C. §§ 4701, <i>et seq.</i>	Navigable waters of the U.S. within 3 miles of coastline	Barges used as dump sites for hazardous wastes	U.S. has removal authority; owner liable for costs and may be fined
Federal Water Pollution Control Act (FWPCA) as amended by Oil Pollution Act (OPA) 1990	U.S. waters including EEZ	Vessels that pose environmental risk from discharge or threat of discharge of oil	FOSC has authority to remove discharge threat; removal of vessel only if pollution cannot be mitigated otherwise

In summary, it is unusual for a Federal agency to fund or initiate removal of an “abandoned” vessel under most circumstances, unless it is a navigational hazard or poses a significant pollution risk. In particular, smaller, recreational or fishing vessels that likely

compose the majority of reported incidents are seldom removed under Federal authorities and funding. Therefore, it is up to state and local authorities to address the issue.

Federal Emergency Management Agency (FEMA) Public Assistance Program funds may be used for removal of vessels wrecked and abandoned after a hurricane or other natural disaster. Local government entities and the State may seek reimbursement for associated eligible disposal costs during declared emergency situations. There are a number of factors that may be considered in determining eligibility. Debris removal (including vessels) may be authorized when it: 1) eliminates immediate threats to lives, public health and safety; 2) eliminates immediate threats of significant damage to improved public or private property; and/or 3) ensures economic recovery of the affected areas to the benefit of the community at large.

State Programs and Funding

While the problem of vessel abandonment is widespread, state perspectives vary on the significance of the problem and on how it should be managed. Personnel from the majority of agencies surveyed consider vessel abandonment a significant problem, particularly in regions that are subject to hurricanes (southern/mid-Atlantic and Gulf coast states, Caribbean territories) and typhoons (Pacific Island territories), and in states with large boating communities (northern Atlantic, Pacific coast, and Great Lake).

Some states have staff dedicated programs while others address the problem in an ad-hoc manner (Figure 1). Several examples are described below.

California: The Abandoned Watercraft Abatement Fund (created in 1997) provides up to \$1 million per year in removal, storage, and disposal costs statewide. Local authorities (e.g., city harbor masters) must apply for the money through a written grant and provide 10 percent in matching funds. One third of one employee's time is devoted to managing the program.

Florida: Florida had a Derelict Vessels Removal Grant Program, but it did not receive funding for the 2005 fiscal year. Fifty-three vessels were removed in 2004. A recent news article in the St. Petersburg (Florida) times, reported that there are thousands of derelict vessels cluttering Florida's coastline and that the state has targeted about 850 of the worst vessels for removal.

Louisiana: Louisiana has an Abandoned Barge Program run by a partnership between the Louisiana Oil Spill Coordinator's Office (LOSCO), the U.S. Coast Guard, and the U.S. EPA. Since its creation, the program has been expanded to include facilities through a partnership with the Louisiana Department of Natural Resources. The program does not address recreational watercraft.

Maryland: Maryland has a well-organized system for addressing the issue of abandoned vessels. The DNR conducts annual surveys of harbors, marinas, and county and state parks to identify and record potentially abandoned and derelict vessels. The Abandoned Boat Program has been in place since the mid-1980s and is consistently funded by the state at \$300,000 annually. The fund is managed by the DNR and is allocated to the counties according to need. Either DNR or local law enforcement may investigate a claim. If no owners are found, counties may apply for reimbursement for funds they spent on vessel removal. A limit of \$30,000 per year may go to any one county, however, more may be allocated under special circumstances. Any

unused funds may be carried over into the following year, but a two-year limit is in place. The state averages 25 removal projects per year.

Mississippi: The State of Mississippi Derelict Vessel Removal Program was established in 1998 and has successfully removed 137 abandoned vessels, as of December 2004. This program is funded on an annual basis (\$50,000-250,000) through the Tidelands Trust Fund, and has established procedures for removing a range of vessels, from small shrimp boats to large vessels and barges. The Department of Marine Resources (DMR) Marine Patrol is responsible for investigating claims.

South Carolina: Since 2003, the State of South Carolina has received federal assistance from NOAA for a Marine Debris and Abandoned Vessel Removal Project. An inventory database of marine debris and abandoned vessels in the Charleston area was compiled, and the database was used to prioritize the removal of 17 vessels and major marine debris items during Phase I (grant award: \$167,000). An inventory database with field verification was also completed for 3 additional counties in the Beaufort area in Phase II. The State requested additional funding (\$187,000) in 2005 to expand the program to 8 coastal counties.

Oregon: The Oregon legislature passed a statute in the late 1990s that required local law enforcement officials to manage abandoned vessel issues. In 2003, the legislature modified the law to provide \$150,000 per biennium for vessel removals through the Abandoned Boat Removal and Cleanup sub-account under the Boating Safety, Law Enforcement, and Facility account. The legislation also expands enforcement authority to include the port authorities. The program is managed by Oregon State Marine Board (OSMB) and is funded through recreational boater fees; no additional taxes were added to the existing fees for the purpose of abandoned vessel removal. The program reimburses local agencies 75 percent of their removal costs per vessel for vessels under 200 gross tones.

Virginia: The State of Virginia has no specific program or funding regarding derelict vessel removal, but legislation and procedures are in place. In the past, the State has supported community-initiated projects. For example, from 1996-2001 the Elizabeth River Project received \$1 million from the Virginia Marine Resources Commission to remove 44 derelict vessels from the river. However, funding for removing 101 remaining vessels has not been appropriated.

Washington: In 2002, Washington DNR created the Derelict Vessel Removal Program in response to concerns about increasing numbers of abandoned and derelict vessels in Puget Sound. The funding is derived from a two-dollar tax added to boat registration fees and will reimburse local governments for 75 percent of the removal costs per vessel. The balance of the annual fund in early 2006 was \$700,000. The DNR administers the fund, but county and/or city officials typically investigate claims and apply for aid. In some cases, the DNR acts as the local government and manages removals itself. Since 2003, at least 83 vessels have been successfully removed, and numerous others have been cataloged and marked for future consideration. The DNR is currently working on a statewide inventory of abandoned vessels in need of attention.

In summary, five states surveyed in 2005 have consistently funded, statewide abandoned/derelict vessel programs. Annual funding ranges from \$50,000 to \$1 million dollars (Figure 2). All of the programs are administered by a state agency, typically the Department of Natural Resources (or the state equivalent) or a state marine law enforcement entity. In California and Oregon, the role of the state agency responsible for managing the fund is solely administrative, and local (e.g., county, city) agencies are responsible for conducting investigations and applying for reimbursement. In Maryland, Washington, and Mississippi, either state or local officials may investigate claims and remove vessels. Maryland and Mississippi do not require matching funds by local entities seeking reimbursement for removal costs; California requires a 10 percent match, while Oregon and Washington require a 25 percent match.

Legislation

Regardless of whether states have funded programs dedicated to abandoned vessel issues, most have drafted legislation relevant to the problem. These laws range in scope and include regulation of issues including: navigation obstructions, legal mooring procedures, abandoned vehicles, vehicle registration and sale, personal property rights, owner notification procedures, seizure and removal authority, and fines and penalties. States using multiple authorities have mixed success managing the issue. Specific and dedicated legislation seems to facilitate effective management. Criteria for effective legislation and associated regulations are few but critical.

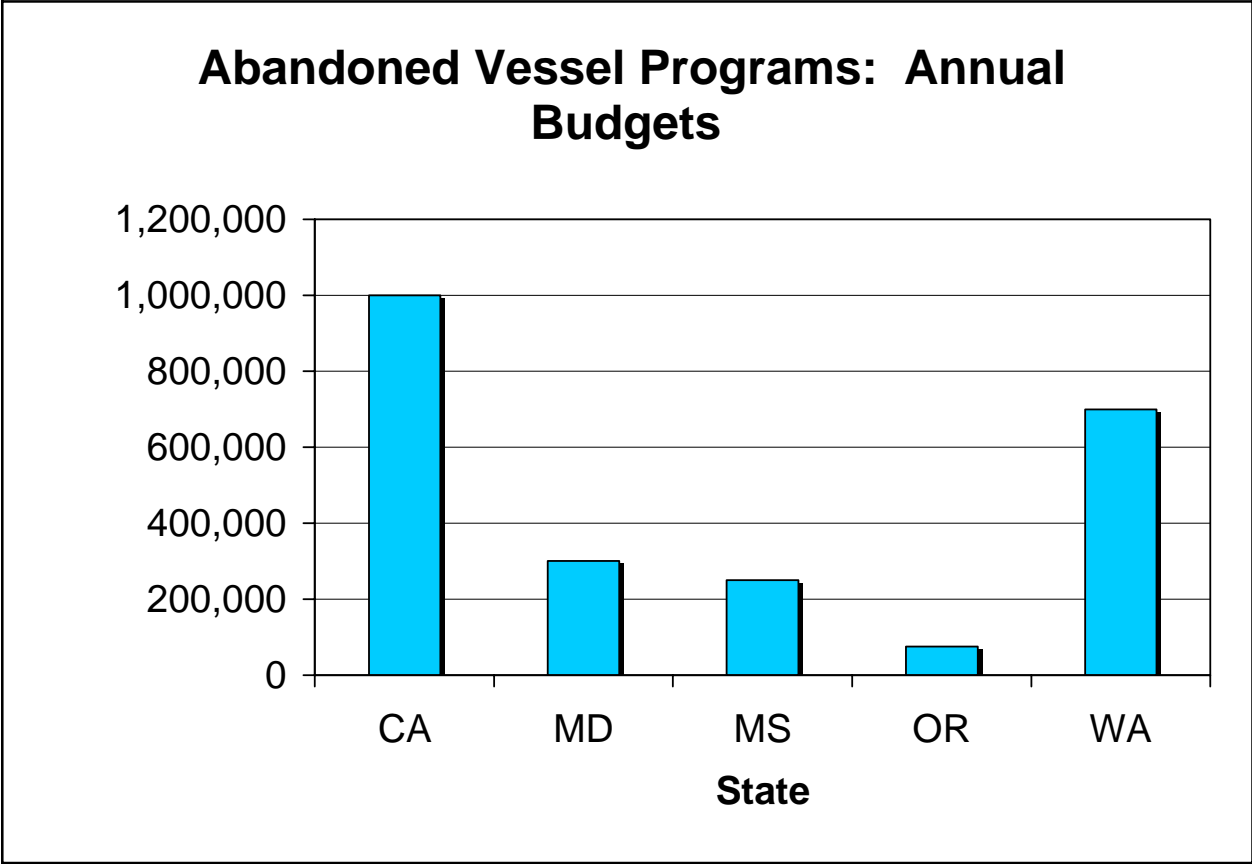


FIGURE 2. Summary of maximum annual budgets for consistently funded abandoned/derelict vessel programs by State.

They include:

Dedicated funding:

Funding is critical for removal, administrative, and other costs. Without funding, vessels are typically not addressed or removed.

Specific authority to claim vessels:

In many cases an operation can be delayed when the responding agencies cannot prove ownership or an intractable owner refuses to allow responders to remove a vessel. When there is legislation that clearly provides authority for declaring a vessel abandoned, there are several advantages. For instance, emergency removal operations are streamlined, and sometimes removal can take place within 24 hours.

Effective mechanism to prioritize cases:

A prioritization scheme is also critical. Funding is never at levels that would allow removal of all potential derelicts. A clear prioritization scheme helps responders allocate funds and manage parties who may be strongly advocating the removal of low impact vessels.

Authority to penalize derelict owner or pursue them for removal costs:

Clear authority and mechanisms for cost recovery from those responsible is key. Not only does it provide the potential to recapture expenses and apply them toward further removals, but it also gives enforcement authorities leverage to encourage recalcitrant owners to do remove their own vessels.

Investigative Procedures

The details of investigative procedures used by authorities when addressing a claim vary by state, but there are similarities in the process. Figure 3 conceptualizes the process that most states follow.

Periods of Abandonment

Definitions and periods of abandonment vary by state. An illegally moored or unattended vessel on public or private property may be considered “abandoned” in as little as 6-24 hours in some states or under certain circumstances, or as long as 30-120 days in others.

Responsible State and Local Agencies

Most states surveyed use a combination of state and local (e.g., county, city, harbor) personnel to respond to vessel issues. Often the state agency plays an administrative role while the local authorities deal with individual cases. In other states, either a state or a local agency is primarily responsible for vessel issues, and there is not much interaction between the two groups. In Pennsylvania and Ohio, the owner of the land that the vessel is located on (e.g., state, county, private) determines what agency or individual has authority for removal.

Determination of Pollution or Navigational Hazards

The primary issue associated with derelict vessels in most states is whether there is potential for a pollution release. The marine police or a similar agency typically notifies the USCG if a pollution threat is likely. If the USCG determines that the vessel may pose a pollution threat, it may remove the oil or other hazardous materials, but they do not usually remove the vessel. If a vessel is not a pollution threat, but poses a navigational threat, it is more likely to be removed quickly by the state or local authorities than under other circumstances.

Registered Owner Identification

The next step for the state or local authority responding to the incident is to determine ownership, generally through registration records held by the state and identification stickers and/or numbers on the vessel. In several states, the agency personnel surveyed stated that owners are typically compliant, and it is not necessary to seek legal action or to enforce penalties. Compliant owners are responsible for vessel removal and all associated fees. In most states, a period of notification occurs where information is posted on the vessel and in the local newspaper (period of notification ranges from 5 days to two weeks) to ensure that the vessel owner has the opportunity to claim the vessel. In some cases the party interested in acquiring the vessel is responsible for posting the ad in the newspaper. In addition, a letter is typically mailed to the owner’s last known address to make known the authority’s intent to auction, sell, or dispose of the vessel. The owner is then given 15-90 days to respond. Some states qualify that the waiting period only refers to a vessel that is a “non-hazard”, and that immediate removal occurs under more critical circumstances.

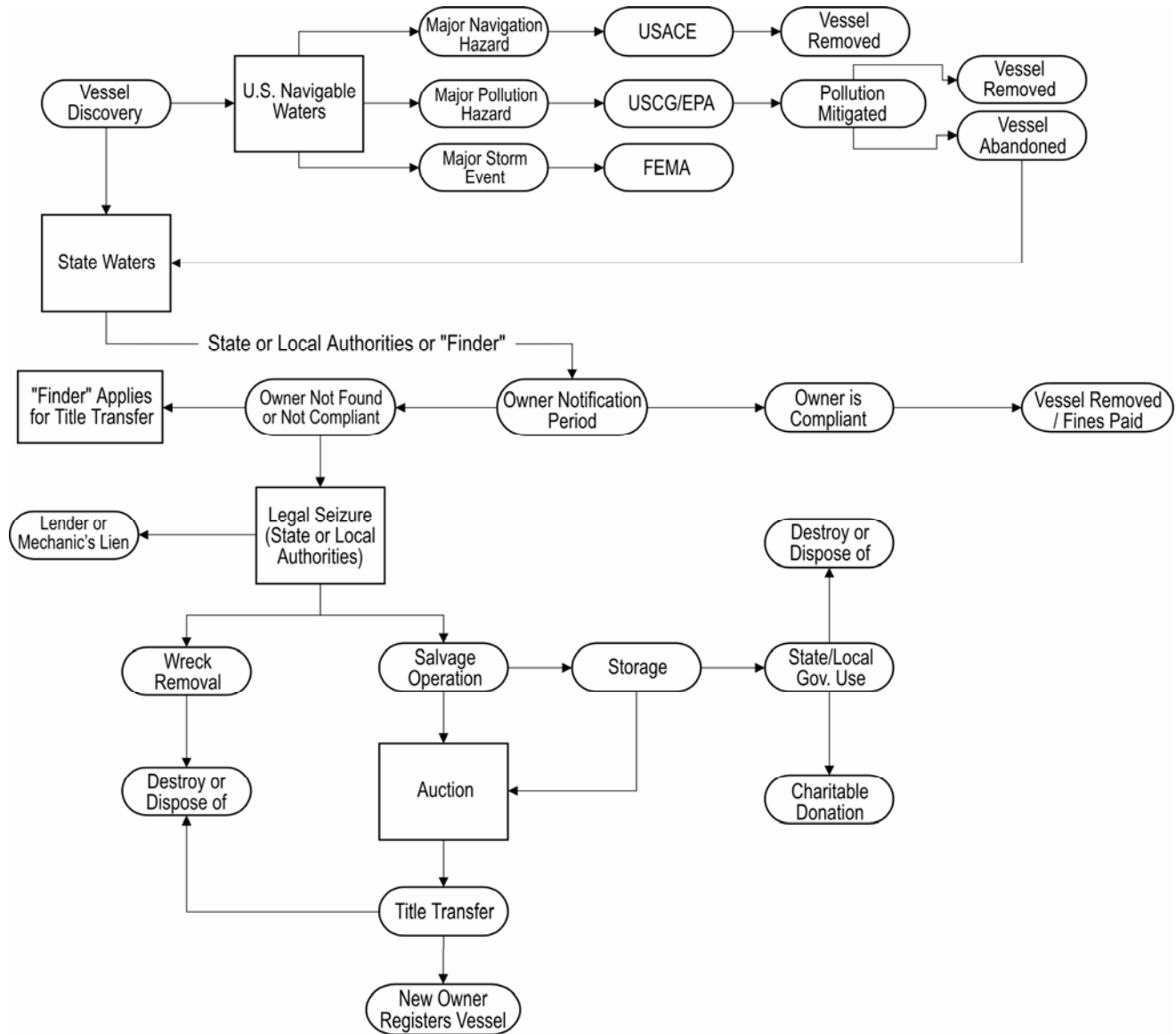


FIGURE 3. Conceptual model of legislative procedures for abandoned/derelict vessel incidents.

Removal Process and Agency Reimbursement when Owner Cannot be Determined

If the owner cannot be determined, or is unwilling or unable to remove the vessel, state and local authorities have several options (depending on individual state laws). The most common are:

- The lender or mechanic (if left at a repair yard) puts a lien on the vessel;
- Title transfer (see examples of state specifications below);
- A salvage company removes the vessel and keeps or sells it;
- The vessel is removed from the water and stored by the state for a defined time period until further action is taken;
- The vessel is used for state government business;
- The vessel is donated by the state to a nonprofit/charitable organization;
- The vessel is advertised and then auctioned;
- A wreck removal company is hired to remove and dispose of the vessel and debris; or
- The vessel is destroyed.

In cases where the Federally Emergency Management Agency (FEMA) is involved in vessel removal (e.g., following hurricanes), there may be additional requirements to consider.

Once the responding agency has taken possession of the vessel, authorities typically have established time periods during which owners can still claim vessels before further action is taken. These time periods range from “immediate” to 72 hours if the vessel is a time-sensitive hazard (e.g., in imminent danger of sinking), a navigational or other hazard (e.g., pollution), but typically range from 7-90 days in other cases. Some states have longer periods of up to 6 months, or even a year if the vessel is stored on a state lot. The state of Maryland gives owners the opportunity to have their unwanted vessels destroyed at no cost if they transport the vessel to the facility for disposal prior to abandonment. Salvaging and auctioning typically only occur if the vessel is appraised above a certain monetary value.

Charges, Penalties, and Fines

Owners may be charged with causing an “obstruction to navigation” or for “illegally mooring” the vessel. In most states, owners are liable for the cost of removal, storage, disposal, administrative costs, and associated environmental damage if they do not come forward and claim the vessel and take responsibility for removal prior to the authorities doing so. Table 2 provides information on penalties that are charged in some states in addition to removal and disposal costs. Owners may be fined multiple times, depending on circumstances. Fines that accrue are an example.

Several states (e.g., Alaska, Georgia, Pennsylvania, Illinois, Minnesota) reported that little if any legal action is usually taken against owners of abandoned vessels. In some states, this is because owners are generally compliant (e.g., Pennsylvania, Illinois, Minnesota), in other states, lack of coordination and funding to deal with the issue make pursuing legal action difficult (e.g., Alaska).

Registration/Title Transfer

Several states provided information on title transfers and policies for “finders” interested in registering “abandoned” vessels. Some example processes are described below.

TABLE 2. State enforced penalties for vessel abandonment.

State(s)	Fines	Jail Time
Alabama, Alaska, Louisiana	\$500	6 months
Maryland	\$1,000-\$2,000	6 months
South Carolina	\$100-\$500	30 days
California, Illinois, New Hampshire, New Jersey, Rhode Island, Wisconsin	~\$500-\$1,000	None
Maine, Minnesota, Mississippi	1.5-5 times the cost of removal plus fines (~\$100-500)	None

Louisiana: Louisiana personnel, in particular, mentioned that theft of ‘abandoned’ or unattended vessels in their state was a significant issue. Prior to 1998, approximately 3,000 “abandoned” vessel incidents were reported each year to the Enforcement Division of the Louisiana Department of Wildlife and Fisheries. Most of those cases involved people trying to establish ownership of vessels they “found” by getting the state to first declare them abandoned. In response, Louisiana passed the Inspection Act of 1998, which requires that all vessels be registered, and that “found” vessels go through a detailed inspection process before they are declared abandoned and issued new titles.

New Jersey: If a boat is found abandoned or illegally moored, the finder contacts the local police department who notifies the state. In most reported cases, vessels are small, unidentifiable, of low value and ownership is difficult to determine without proper identification. In these cases, the finder may apply for a transfer of title, or the state may remove the vessel, store it for a period of time, or destroy it. However, if the vessel can be identified and the owner is found, then he/she is held liable for any losses or penalties incurred as a result of the vessel’s abandonment. The state will not release the vessel to the owner or finder until it is compensated.

Pennsylvania: If a vessel is found on private property, the owner of that property may register the vessel after a period of three months. The finder first notifies the Pennsylvania Fish and Boat Commission regarding their intent to register the abandoned boat. The Commission then attempts to determine ownership using the vessel’s VIN number, if one can be found, and attempts to notify the owner. If the owner does not respond or claim the vessel after 30 days, the Commission may grant the request for a transfer of title. The person attempting to establish title must also publish a public notification for at least three days; the 30-day period begins after the third day of notice. Re-registration cannot occur earlier than 60 days after the Commission was

originally notified. If the vessel was registered in another state, the 60-day period may be extended.

Abandoned Vessel Program Case Study Partnership Project

NOAA'S Abandoned Vessel Program is collecting information from agencies and other relevant partners in states and territories in order to build a reference for those managers interested in or faced with vessel removals. To date, NOAA has posted 15 case studies to the AVP website for vessel removals in Florida, Washington, CNMI, Guam, California, South Carolina, American Samoa, Hawaii, and Puerto Rico. Information in the case studies includes: basic vessel description, circumstances leading to derelict status and/or a condition requiring action, basic site description, environmental or public safety threats, removal operation, funding sources, agency involvement, agency authority, required permits, salvage, methods used for vessel extraction, disposal, lessons learned, and photos. The Partnership Project along with this document provides insight into successful programs and removal operations that have occurred nationwide, as well as funding sources and current legislation, and will serve as a source of contacts and a means to gather more information on the subject.

Conclusions

Abandoned vessel incidents in U.S. states and territories are a source of navigational, pollution, environmental, and public health threats and can be significant financial burdens on state and/or local authorities or private citizens responsible for addressing them. Some key findings from this survey effort are as follows:

- Federal involvement in most abandoned vessel incidents is limited to major pollution or navigation threats.
- Only five states (California, Maryland, Mississippi, Oregon, and Washington) have established consistently funded programs. Annual funding ranges from \$50,000 to \$1 million. Several states require a match component for vessel removal.
- Funding originates from a variety of sources, including: vessel registration taxes, federal grants, 'general' or other state funds, recreational boater fees, and business and community partnerships.
- While state legislation related to abandoned vessel issues exists, certain criteria, such as specific authority to remove vessels and penalize owners, determine the level of effectiveness.
- States with an effective method to prioritize cases have greater success managing a statewide problem.
- States using multiple authorities have mixed success managing the issue.
- If a state coordinates a funded effort to inventory and remove vessels, such as in South Carolina through federal grants, private entities and local municipalities may share some of the burden of removal costs and logistics in an effort to partner with the state for positive community-wide results.

As abandoned vessel incidents increase in coastal areas, the need for specific legislation, programs, funding, and knowledgeable staff in most states is apparent. Educating boaters by providing a clear understanding of relevant laws through websites (e.g., Washington State:

http://www.dnr.wa.gov/htdocs/aqr/derelect_vessel/index.html) or other media and explaining options other than abandonment, such as Maryland's provision for no-cost destruction and disposal if a vessel is transported to a proper facility, may encourage responsible behavior and contribute to effective prevention.

Note:

This report is base on extensive phone interview research. The authors had direct conversations with all the states represented in the document. Internet research was used to generate supplemental information. The Abandoned Vessel Program will gladly discuss this or any other part of the report upon request.

For more information contact the Abandoned Vessel Program at 206-526-4563 or view the website: <http://response.restoration.noaa.gov/vessels/>.