

Pacific States / British Columbia Oil Spill Task Force

**Abandoned and Derelict Vessel (ADV)  
Blue-Ribbon Program  
for Western U.S. States (AK, CA, HI, OR and WA)**

Final



F/V Western, Coos Bay, OR. Photo provided by OR Marine

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This blue-ribbon program is the product of the Pacific States/British Columbia Oil Spill Task Force ADV (ADV) Work Group.

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## Section I. Executive Summary

Abandoned and derelict vessels (ADVs) are a growing global problem that harm aquatic health and the health of humans and wildlife; threaten commerce and navigation safety; and deplete resources that communities depend upon.

The Pacific States / British Columbia Oil Spill Task Force (Task Force) identified the issue of ADVs as a common threat and a critical, emerging issue in 2017. In 2018, the Task Force formed an ADV Workgroup comprised of ADV experts and program leads from each of the five Task Force jurisdictions: Alaska, California, Hawaii, Oregon, and Washington. The ADV Workgroup's initial task was to document the scope and scale of the problem of ADVs across each jurisdiction.

In March 2018, the ADV Workgroup published [\*The Current State of Abandoned and Derelict Vessels on the West Coast – White Paper\*](#) (White Paper) summarizing the results of this initial work. Some of the conclusions of the White Paper include:

- In general, government policies to comprehensively address ADVs do not exist. For example, there are significant discrepancies between how abandoned cars and abandoned vessels are addressed.
- In the U.S., there is no comprehensive federal ADV program. The federal agencies that have ADV jurisdiction, including the U.S. Coast Guard and the U.S. Army Corp of Engineers, have limited roles and authority.
- State programs vary widely. Only one (Washington) can be considered comprehensive, and no state program has sufficient funding to address ADVs.
- In Canada, the federal Abandoned and Wrecked Vessel Act is comprehensive yet underfunded. This federal program takes precedent over provincial programs.
- A comprehensive program to address ADVs at the state level must contain the following five elements:
  1. Authority
  2. Prevention
  3. Public Outreach and Education
  4. Removal and Deconstruction
  5. Funding

Following publication of the White Paper, the ADV Workgroup identified its next task: develop a comprehensive, blue-ribbon or “model” state/provincial-level program to address ADVs. This paper contains this blue-ribbon “model” program. It consists primarily of recommendations that may be implemented by states to address their own ADV issues.

Because ADVs are addressed primarily at a federal, and not a provincial, level in Canada, this blue-ribbon paper includes only recommendations for western U.S. states.

The blue-ribbon program described in this paper reflects the collective input and expertise of ADV Workgroup members, which include numerous ADV leads within each Task Force jurisdiction. It is the Workgroup's opinion that adoption of each recommended element in this

paper would result in a comprehensive ADV program that would successfully remove legacy ADVs and prevent and remove future ADVs. Implementation of the blue-ribbon program will vary by state due to differences in existing programs and extent of the problem.

This blue-ribbon program addresses the five elements described above: authority; prevention; public outreach and education; removal and deconstruction; and funding.

For each of the five elements, this paper includes a high-level overview of the topic; a summary of the gaps and issues related to that topic (primarily from the findings of the White Paper); and a list of recommendations for states.

A total of 33 recommendations are included in the report and a summary can be found in Appendix B.

For a complete list of definitions used in this report, including “abandoned” and “derelict”, see Appendix A.

To address the numerous gaps identified in the “authorities” section, this paper also includes a list of recommendations for the Task Force’s federal partners.

## **Section II. Background/Context**

ADV's threaten the health of aquatic environments, harm wildlife, and deplete resources that communities depend upon. Through deliberate action or negligence, ADVs break up, sink, or block navigation channels. ADVs often contain harmful quantities of oil, lubricant, and other toxic substances in the materials used to construct the vessel or in cargo on board. These chemicals can injure or kill marine mammals, waterfowl and other aquatic life, and contaminate aquatic lands, nearby shorelines and water bodies. Vessels that settle on the bottom can disrupt the aquatic environment, scouring or crushing sensitive habitats like eelgrass beds and kelp meadows.

Many harmful toxic substances on derelict vessels do not dissolve in water and remain in the environment for lengthy periods of time. These Persistent Organic Pollutants (POPs) are fat-soluble and eventually accumulate in animal fat, becoming concentrated in top predators like orca whales and otters.

The Pacific States / British Columbia Oil Spill Task Force (Task Force) identified the issue of ADVs as a common threat and a critical, emerging issue in 2017. In 2018, they formed the Abandoned and Derelict Vessel Workgroup (ADV Workgroup), comprised of ADV experts and program leads from each of the five Task Force jurisdictions: Alaska, California, Hawaii, Oregon, and Washington.

The ADV Workgroup’s initial task was to document the scope and scale of the problem of ADVs across each of the five states, as well as to identify successful efforts elsewhere in the United States and Canada in addressing ADVs. In March 2018, the ADV Workgroup published a White

Paper summarizing the results of this initial work. The White Paper is titled *The Current State of Abandoned and Derelict Vessels on the West Coast – White Paper* (White Paper) and is available by following the link on page 6.

Among the main conclusions of the White Paper are:

- The problem of ADVs includes both commercial and recreational vessels.
- The majority of ADVs are recreational, yet commercial vessels are typically larger and on a per vessel basis, can cost several orders of magnitude more than recreational vessels to remove.
- In addition to a steady stream of newly abandoned vessels, most states also face an increasing backlog of existing or “legacy” ADVs.
- In general, government policies have not been created to address this problem. For example, there are significant discrepancies between how abandoned cars and abandoned vessels are addressed.
- In the US, there is no comprehensive federal program. The few federal agencies that are involved in this issue (the US Coast Guard and the US Army Corp of Engineers) have limited roles.
- State programs vary widely. Only one Task Force state (Washington) can be considered comprehensive. Most state programs have insufficient funding to address ADVs.
- In Canada, the federal *Abandoned and Wrecked Vessel Act* is comprehensive yet underfunded, and this federal program takes precedent over provincial programs.
- No jurisdiction has a comprehensive outreach and education program associated with ADVs.

One of the key recommendations emerging from the White Paper was that a comprehensive program at the state level to address ADVs should include the following five elements.

1. Authority
2. Prevention
3. Public Outreach and Education
4. Removal and Deconstruction
5. Funding

Following publication of the White Paper, the ADV Workgroup identified a second task: develop a comprehensive, blue-ribbon or “model” state program to comprehensively address ADVs. This paper contains this blue-ribbon, “model” program. It consists primarily of recommendations that may be implemented by states to address their own ADV issues.

**The purpose of this report is to provide Task Force member jurisdictions<sup>1</sup> with a model or “blue-ribbon” ADV (ADV) program to advance their efforts to comprehensively address the many challenges posed by ADVs.**

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<sup>1</sup> States of Alaska, California, Hawaii, Oregon and Washington.

The blue-ribbon program described in this paper reflect the collective input and expertise of ADV leads at each state within the Task Force: Alaska, California, Hawaii, Oregon, and Washington. It is their opinion that adoption of each recommended element in this paper would result in a comprehensive ADV program that would result in proactively preventing new ADVs from entering the waste stream, and efficiently and effectively removing existing ADVs.

## Section III. Authority

### Overview

Authority refers to the legal ability of a governing agency to declare a vessel “abandoned” and thus remove and dispose of it. The issue of authority regarding ADVs is complex, with multiple federal, state, and local agencies involved, as well as private landowners.

### Program Loopholes: Authority



In 2017, the *Point Estero* ran aground near Cayucos State Beach, California. The US Coast Guard removed the oil but then departed. Vessel removal costs were estimated at \$70,000. The uninsured owner walked away. The vessel was not eligible for the state’s recreational ADV program, and there is no commercial program. Both the county and the State Lands Commission have authority to remove the vessel, but no funding to do so. As of 2019, the vessel remains. *Photo: CA OSPR*

### Gaps in ADV Authorities (Key Findings from ADV White Paper)

Most Task Force jurisdictions already have sufficient authority to declare vessels abandoned or derelict; however, numerous gaps exist.

#### **Lack of a legal process for seizing, impounding and removing ADVs.**

A legal process for an aquatic land custodian to accomplish seizure, impoundment, removal or custody of an ADV through due process is currently lacking across most west coast jurisdictions. The authority given to the custodian must be broad enough to address a wide variety of situations, including unforeseeable situations, but specific enough to prevent the taking of property without due process. U.S. federal agencies have authority governing specific situations, which limits their effectiveness in dealing with ADVs. For a custodian’s authority to be effective, it must be exacting in procedure but flexible in its application.

#### **U.S. Federal authorities**

Five different U.S. federal agencies have ADV authorities, including: 1) the National Oceanic and Atmospheric Administration (NOAA), 2. the United States Army Corps of Engineers (USACE), 3. the United States Coast Guard (USCG), 4. The Environmental Protection Agency (EPA) and 5. the Federal Emergency Management Agency (FEMA). As indicated in the Point Estero situation (see insert at right), federal authorities and responsibilities frequently end once contamination is

removed from a vessel, leaving complicated and expensive removal actions to state and local agencies.

A March 2017 US Government Accountability Office (GAO) Report to Congress titled *Federal and State Actions, Expenditures, and Challenges to Addressing Abandoned and Derelict Vessels*<sup>2</sup> noted “agencies reported they generally did not have funding to support actions beyond responding to ADVs posing navigation hazards in federally-maintained waterways and pollution and public health threats, ***nor were they required to do so by federal law or agency policy.***” ***(emphasis added)***

Table 1 and Figure 1 provide brief overviews of each U.S. Federal agency’s authorities, and limits, regarding ADVs.

**Table 1: U.S. Federal Agencies Authorities/Limitations regarding ADVs**

Agency	Specific ADV authority (geographic focus; source of authority; funding)
<b>NOAA</b>	<ul style="list-style-type: none"> <li>• Primary geographic focus for addressing ADVs is within National Marine Sanctuaries, but supports other marine environments by providing grants for private and public lands from the Marine Debris Program.</li> <li>• ADVs are considered marine debris. However, the Marine Debris Grant Program cannot be considered a true ADV-removal program because it includes all marine debris, not just ADVs.</li> </ul>
<b>USACE</b>	<ul style="list-style-type: none"> <li>• Addresses ADVs only in federally recognized navigation channels, and only if the vessel impacts the maintenance or navigation of the channel.</li> <li>• Authorized to remove the vessel, but has no funding to do so.</li> </ul>
<b>USCG (Coast) and EPA (Inland)</b>	<ul style="list-style-type: none"> <li>• Removes pollution threat from vessel where there is an environmental or a public health threat.</li> <li>• Petroleum removal funds come from the Oil Spill Liability Trust Fund. Vessel removal funds would have to come from the agency’s budget.</li> <li>• Neither agency has dedicated ADV removal funding.</li> </ul>
<b>FEMA</b>	<ul style="list-style-type: none"> <li>• ADV authorities arise from Robert T. Stafford Disaster Relief and Emergency Assistance Act.</li> <li>• Can only fund ADV removals under declared emergencies.</li> </ul>

<sup>2</sup> <https://www.gao.gov/assets/690/683713.pdf>, 5DEC19

**Figure 1. U.S. Federal Agency ADV Authorities**



Source: GAO analysis of federal agency documentation. | GAO-17-202

### State and Local Authorities

Based on a review of many U.S. states, five gaps have been identified in terms of state/local authorities regarding ADVs.

- 1. Narrow focus on recreational vessels only.** Some agencies have limited authority to deal with ADVs from state statutes, or have defined their programs to address only recreational vessels, leaving the commercial vessels out of their authority to remove.<sup>3</sup> There are fewer commercial vessels, but they are more expensive to deal with and have a larger single point of impact on the environment.
- 2. Narrow focus on reasons for removal.** Some agencies limit ADV removals to emergencies or threats to human safety.<sup>4</sup> While most ADVs will eventually meet these criteria, it does not leave room for flexibility in dealing with ADV's nor does it give authority to remove nuisance vessels.
- 3. Limited geographic focus.** Some entities limit their ADV removal authority to public aquatic lands only.<sup>5</sup> Private aquatic land owners wishing to remove an ADV must rely on the lost property or trespass laws of their state and are given little to no help from federal or state level agencies.
- 4. Limited authority for local jurisdictions.** Vessel removal approvals made at the state level based on the state's priorities effectively removing localities from placing priorities within their own jurisdictions.<sup>6</sup> Even if a local agency wanted to fund and remove an ADV, they need state approval if the vessel is on state-owned aquatic lands.

<sup>3</sup> <https://dnr.maryland.gov/Boating/Pages/abandonedboats.aspx>, 21JUN19

<sup>4</sup> <https://www.monroecounty-fl.gov/441/Derelict-and-Abandoned-Vessels>, 21JUN19

<sup>5</sup> <https://www.oregon.gov/osmb/boater-info/Pages/Abandoned-Derelict-Boats.aspx>, 21JUN19

<sup>6</sup> <https://dmv.vermont.gov/enforcement-and-safety/laws/abandoned-vessel>, 21JUN19

5. **Limits on private property owners’ ability to act.** Private property owners who find ADVs on their properties usually cannot access state funds to have them removed. While they *can* access funding from NOAA’s Marine Debris Program grants,<sup>7</sup> they do not actually have the legal authority to remove the vessels and must appeal to the state to have the property declared lost. (Alaska is an exception. It authorizes private property owners to declare vessels abandoned or derelict, and therefore subject to removal).

## Recommendations

### 1. Ensure broad capability within ADV programs.

Ensure that the aquatic land<sup>8</sup> custodian has authority to remove a hazard, nuisance or threat while protecting the vessel owner’s rights and due process. The best structure for an ADV removal program would be strict in process and unrestricted in capability. Legal authority should be free of gaps in jurisdiction, clear in process, and have the ability to adapt to changing circumstances.

An ADV program should not limit or constrain the ability and authority of an agency to enact and enforce ordinances or other regulations relating to derelict and abandoned vessels, or to take any actions authorized by federal or state law in responding to derelict or abandoned vessels.

### 2. Empower local (e.g. county, city, Ports, etc.) authorities to remove ADVs.

In addition to having proper authority, the process by which state agencies gain the legal right to remove, deconstruct, sell or use a vessel should be clearly spelled out in state statute in straightforward language comprehensible to any agency staff member.

State agencies frequently prioritize ADV removals due to limited resources, which can have the unintended consequence of limiting the ability of a local entity (city, county or private property owner) to act. Therefore, local authorities should have a voice in removal prioritization and, when appropriate, should have authority to seize, impound, remove or gain custody of either recreational or commercial vessels.

### Case Study

Washington State’s Derelict Vessel Removal Program prioritizes ADVs based on threats to human safety and the environment. This focus is due to limited resources. However, Washington State’s statutes allow any authorized public entity to remove vessels within their jurisdiction. This gives local entities, such as ports, the ability to remove a vessel that is a low priority for the state.

Washington is also an example of limiting authorities of private property owners. Counties typically have ADV removal authority on private property, but if the county refuses to exercise its authority, the property owner cannot use the State program to remove the vessel.

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<sup>7</sup> <https://marinedebris.noaa.gov/current-efforts/removal> 21JUN19

<sup>8</sup> Also referred to as “submerged lands” in some jurisdictions such as Alaska.

In the interest of maintaining an unrestricted ability to deal with ADVs, authorities should be unburdened with undue governmental bureaucracy. Giving a city or private property owner the authority to act would allow them to initiate removals based on local needs and not compete with other localities for state or federal approval.

### **3. Mandate adherence to due process.**

State statute should mandate that agencies and private individuals adhere to due process. The notice requirement process should hold vessel owners responsible for their property and include: the agency's intended action, information on why the action is being taken, how an owner can prevent the intended action or retrieve the vessel, who to contact for more information, the timeline of the process including deadlines for owner actions, and how to appeal if the intended action was successful. Typical notice requirements have a 10 to 30-day notice posted to the vessel accompanied by letters to the last registered owners. Washington also requires the notice of intent to be placed on their Department of Natural Resources' website and published in a newspaper of general circulation. Agencies are indemnified if they follow state statutes and are not negligent in their actions. WA state has comprehensive due process/notification requirements. Detailed information is in Appendix C.

Once a vessel meets the definition of abandoned or derelict, a notice should be posted on the vessel with an intent to gain custody. The notice should include the following information: who is taking custody, why the vessel was or is being removed, how to appeal the seizure, who is responsible for the costs involved with the seizure, how to prevent the vessels seizure or how to retrieve the vessel after seizure, and the timeline or deadlines in the process.

Notices could be sent to the owners on record, as well as published via the web, newspaper, and other media outlets.

Washington State has due process requirements that could serve as a model.

### **4. Empower agencies to dispose of ADVs in publicly beneficial ways.**

An agency should have the broad ability to sell, deconstruct, recycle or use the vessel in a way that provides the best public benefit. Statutes and policy should not encourage or prioritize the sale of removed vessels regardless of condition to discourage the possibility of the same vessel being abandoned or derelict multiple times under multiple owners. If deconstructed, it should be in the most environmentally friendly process possible while keeping costs in mind. Typically, funds garnered from a vessel, either through selling or recycling, are used to reimburse the agency that removed the vessel, with any remainder going into a fund for future vessel removals.

### **5. Ensure that the agency with removal authority can remove any vessel, whether commercial or recreational.**

Decisions regarding removal should be based on a vessel's current condition and situation, not on its as-built intended use and/or ownership status. The following situation in Washington illustrates how it can be accomplished.

Washington Dept. of Natural Resources (DNR) Derelict Vessel Removal Program (DVRP) posted notice on and took into custody a former USCG 41' utility vessel that was legally owned by the US Bureau of Indian Affairs. After taking custody, WA DNR DVRP sold the vessel and the funds were deposited into the Derelict Vessel Removal Account. The USCG vessel posed the same threat to human safety and the environment that a similarly sized recreational vessel posed. The DVRP had jurisdiction over State Owned Aquatic Lands and the vessel met the definition of abandoned, so Washington State statutes gave WA DNR DVRP authority to remove and sell the vessel, provided they follow the legal notice requirements. The vessel's as-built intended use was not a consideration when determining its current condition and situation.



USCG 41' vessel taken into custody by WA State DVRP. Photo: WA State DNR DVRP

All vessels deteriorate and eventually pose the same risk to human safety and the environment, so their current condition and situation should be the only removal priority criterion.

Most commercial vessels are sold for private recreational purposes, or they drop off registration rolls once their maintenance and seaworthiness is cost prohibitive. However, most states still regard them as commercial. It is the vessel's current threat, not its past intended use, that should be the criteria by which its removal should be considered.

#### **6. Empower private property owners.**

Private property owners should be empowered to declare vessels abandoned or derelict and subject to removal because damage caused by ADVs will not be limited to the private property. Many contaminants from ADVs migrate by ocean currents and sediment movement or via the food chain.<sup>9</sup> Removing a vessel early prevents many contaminants from entering the environment and giving property owners options will help prevent larger environmental impacts.

#### **7. Extend ticketing authority to state agencies to enforce vessel registration and other aquatic laws.**

Authority to enforce vessel registration and related aquatic laws should be extended to all appropriate state agency personnel.

<sup>9</sup> [https://defenders.org/sites/default/files/publications/buoying\\_wa\\_response\\_abandoned\\_derelict\\_vessels.pdf](https://defenders.org/sites/default/files/publications/buoying_wa_response_abandoned_derelict_vessels.pdf), 21JUN19

## Section IV. Prevention

### Overview

Preventing new ADVs from being added to an already large inventory of legacy ADVs is one of the biggest challenges faced by jurisdictions. The problem of ADVs is not static; as vessels continue to age, more vessels are at risk of sinking. There are many reasons vessels become abandoned or derelict, all of which should be factored into a comprehensive and effective prevention program. These include (but are not limited to):

- aging and weathering
- vulnerability to neglect
- technological changes
- owner inability to keep up with maintenance costs
- maintenance costs exceeding the commercial value of the vessel
- damage following an incident exceeding the value of the vessel
- federal or state sponsored fishery reduction and fishery disaster relief programs that render a vessel's original purpose obsolete

### Gaps in ADV Prevention (Key Findings from White Paper)

The ADV White Paper identified the following gaps in West Coast states' current efforts to prevent the occurrence of new ADVs:

- Lack of vessel registration requirements for both recreational and commercial vessels
- Lack of insurance requirements, especially for wreck removal
- Lack of vessel turn-in programs for vessels in serious disrepair

A comprehensive ADV prevention program would include the following elements:

- Registration system
- Database of ADVs
- Insurance requirements
- Vessel turn-in program

### Case Study: *F/V Western*



In 2014, the *F/V Western*, a former crabbing vessel, was denied moorage at the Port of Coos Bay, OR due to its condition. The boat continued to anchor unauthorized in Coos Bay; battered by storms and beaching at least twice, it finally sank in 2015 near a busy navigation channel in sensitive fish and invertebrate habitat. While floating, the 69.9 ft long, 78 gross ton, wood-hulled vessel from 1934 would have cost \$30,000 to remove; once sank, it cost \$95,000. *Photo: Global Diving and Salvage.*

## Recommendations

### **1. Establish a vessel registration system, including fees and adequate enforcement, for both recreational and commercial vessels.**

States should establish a vessel registration system, including fees and adequate enforcement, for both recreational and commercial vessels. An effective vessel registration system would be similar to that currently used for oil and tire disposal. Vessels, both recreational and commercial, could be required to register like motor vehicles and renew on an annual basis. Registration fees could be collected for both recreation and commercial vessels on an annual basis. While Washington state has the most established program for registration revenue collection, the criteria for subjecting commercial vessels should be expanded. For example, WA does not include large container ships that do one port of call per year; instead, they have some criteria to focus on commercial vessels that spend more time in the state.

Registration also provides an opportunity to collect a fee to fund an ADV program (see Section VII: Funding).

### **2. Establish a comprehensive database to track and (potentially\*) prioritize ADVs.**

Identifying vessels of concern and developing and maintaining a comprehensive database of these identified vessels is one of the most important aspects of prevention.

States should develop robust tracking systems for vessels of concern that include location, condition assessment, and (to help with disposal decisions) prioritization. Ranking/prioritizing the vessels for state-funded removal is important in order to stretch limited resources. However, prioritization should be approached with care, as it can have unintended consequences in terms of local authorities being able to remove ADVs (for example, if they do not show up as a priority on a state-wide list). Local authorities should therefore be involved in state ranking/prioritization processes.

Vessels should be prioritized based on risk, impact, and ease of removal. Local entities should be involved in the prioritization process. It is not unreasonable to prioritize removal of multiple lower risk vessels if it can be done for the same cost as removal of a single mid or higher risk vessel since it represents the largest reduction in the overall threat from ADVs.

The process for identifying and reporting ADVs should be seamless and allow for immediate reporting from the field. This could take the form of either a free mobile app or a hotline. The reporting process should include a consistent set of questions to gather as much information about the vessel as possible for the initial reporter. However, it is unlikely that the initial reporter will be able to fully assess the pollution risk posed by vessels nor should the process encourage the public to board or enter ADVs. The hosting agency also needs to be aware that while a vessel may appear abandoned to the reporting party, the vessel owner may not agree. Tracking ADVs is a related but separate subject from vessel ownership and seizure.

Coordinating, tracking, and prioritizing vessels of concern throughout each state and geographic area will usually result in more timely removal, thus lowering vessel removal and disposal costs, pollution concerns, liability, and risks to navigation.

Requiring marina/moorage owners to collect and maintain vessel and owner information for annual submittal to the state titling and registration authority or the state agency that authorizes the marina/moorage activity (i.e. leasing program) is also important.

**Key elements of a comprehensive database include:**

- An online reporting form that could be created and housed with whichever entity makes sense for that state. Alternatively, a reporting form could be submitted with the annual rent and insurance certificate to the state agency that is in charge of the lease.

**The benefits of establishing this database include:**

- Creating and maintaining a database to record and track vessels of concern is a proactive approach to plan for future pollution problems and will assist agencies in preparing/planning for potential cleanups.
- Since removal costs are often three times more for sunken vessels than removal of floating vessels, addressing vessels prior to them sinking results in less cost for removal.

Maintaining an accurate and comprehensive database requires a coordinated effort among local, state and federal agencies, as well as marinas and Ports.

## Regarding insurance

Insurance is a complex and nuanced topic, with numerous policy types and policy exclusions. The following recommendations are intended to reduce or limit the risk of ADVs to the public, state agency authorizing leasing activities, marina owners, and vessel owners.

**3. Require wreck removal insurance above the value of the vessel for both recreational and commercial vessels.**

*For Marina Operators*

Most marina owners are required by the state leasing program to have commercial general liability insurance. However, commercial liability insurance does not cover wreck removal. Marina owners may (but don't necessarily) acquire insurance policies that provide wreck removal coverage, such as Marina Operators' Legal Liability coverage. Most marinas do not require insurance from slip renters either, although they could apply more stringent conditions to vessel owners prior to renting a slip or moorage.

Washington is an exception, as there have been some cases where commercial liability insurance does cover wreck removal – specifically, because the sunk vessel violates state

law (RCW 79.100.110). Therefore, marina owners could be required to obtain Marina Operators' Legal Liability, which covers wreck removal costs.

Marina Operators' Legal Liability policies cover a marina operator's legal liability for loss or damage to vessels in their care, custody and control, which may include a third-party wreck removal clause. The specific coverage limit will need to be determined by each state, but depending on the size of the marina, limits may range between \$5 and \$10 million. One consideration for determining the coverage amount could be the size of the marina and the number of slips it contains. The larger the marina and the more vessels it has, the higher the likelihood that one may become an ADV.

If marinas are located on state-owned land, which they often are, they are responsible for everything within their state leasehold by a legally binding contract. As such, marina operators should also have pollution coverage to better protect them from sudden or accidental discharge of oil and hazardous waste, especially if gas is dispensed on site for fueling. Again, while limits will need to be determined by each state authority, a \$10 million limit may be advisable for larger marinas.

#### For Vessel Owners

While not all states currently require individual vessel owners to obtain insurance, they should do so. Numerous insurance packages exist that are designed to protect individual vessel owners, regardless of vessel type, such as Protection and Indemnity Insurance. This type of insurance covers wreck removal costs above the value of the vessel. Hull and Machinery insurance covers the property value of the vessel. Regardless of the package, it is important to ensure that the wreck removal clause is part of the insurance coverage policy. Coverage for this type of policy should start at \$1 million and go up to \$5 million as needed.

While this will not help vessel owners who obfuscate ownership and abandon their vessels, it would help owners responsibly dispose of vessels when wrecked instead of leaving them abandoned on beaches and shorelines due to high removal costs.

#### **4. Require surety or performance bonds for vessel removal and repair.**

Requiring surety or performance bonds for vessel removal and repair will limit risk exposure for marina owners. Several Ports now require bonds (e.g. the Port of Astoria in Oregon) for vessel repair work at their moorages due to the increased risk associated with these vessels. The cost of the bond is passed on to slip renters making bond requirements financially attainable. Bonding may also result in better management by marina staff since they would incur an actual annual associated cost. Bonding makes active management of all vessels within a moorage a priority for marina staff. State leasing program staff could strongly encourage marina and port owners to require bonds or insurance to prevent ADVs.

The Port of Port Townsend (WA) requires a vessel to have insurance or a bond before they will haul it out for maintenance in their yard. The Port of Bremerton (WA) requires tenants to name the Port on the insurance policy so the Port will be notified if the insurance is canceled. This in turn would cancel the vessel owner's tenancy.

- 5. Require surety bonds for those lessees that are conducting marine industrial activities such as fish processing, vessel repair, and emergency response with larger ocean-going vessels such as barges and tugs.**

Any issues that arise with those types of vessels or that type of activity may cost more and be more difficult to dispose of due to fuel tank size; the likelihood of bunker C fuel being present; and/or the presence of lead, PCB's, asbestos, and other hazardous waste due to either vessel age and history or disposal logistics.

- 6. Implement a bond requirement for commercial vessels for disposal costs during initial construction and registration.**

Large, commercial ADVs are initially built by large, financially established, for-profit companies. As they age, vessels are often sold or given to progressively smaller and smaller companies and entities, until eventually the owner is unable to pay for vessel upkeep and it becomes derelict. By requiring the initial owner, who profits from the vessel, to help pay for its eventual disposal, vessels are less likely to become derelict and require government funded removals.

- 7. Establish Secondary Liability laws for older and larger vessels and require a vessel survey to assess seaworthiness of all larger and older vessels<sup>10</sup> prior to vessel sales.**

States should establish secondary liability laws for larger and older vessels. When these vessels are sold, the seller would maintain secondary liability for a specified period of time in the event it comes derelict. This would prevent large unseaworthy vessels from being sold to unsuspecting and financially insolvent buyers for trivial amounts (e.g. a 90' tugboat for \$100).

If the vessel is not determined seaworthy and the cost to make it so is more than the value of the vessel, then the vessel may only be scrapped or repaired. If it sold or transferred anyway, the seller may be liable if the vessel becomes abandoned or derelict in the future. In those situations, a state program could also require proof of financial responsibility of the new owner to take on a liability of such a vessel, either in the form of a bond or insurance covering reasonable response, deconstruction, and disposal.

Washington is the only West Coast state with secondary liability requirements, and also serves as a good model for establishing requirements for seaworthiness. Currently, Washington's secondary liability law pertains to vessels 65 feet or over, but WA DNR is proposing to lower it to 35 feet to capture a larger number of vessels that pose a significant threat of becoming derelict or abandoned. Once vessels reach about 35 feet, they are too large to trailer and are likely to be in the water more permanently than smaller vessels.<sup>11</sup>

Details of WA State's secondary liability law are in Appendix D.

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<sup>10</sup> 65 feet and 40 years old are suggested limits by Workgroup participants.

<sup>11</sup> Pers Comm., Troy Wood, Director, WA State DNR ADV Program

## **8. Establish a Vessel Turn-In Program.**

Vessel Turn-in Programs, or VTiPs, enable the state agency with ADV authority to dismantle vessels that do not yet satisfy the definition of “derelict” or “abandoned”, but are likely to become derelict or abandoned in the near future. This keeps future ADVs from entering the pipeline and can significantly reduce costs. Currently, WA and CA are the only states on the West Coast with vessel turn-in programs. In both states, however, only recreational vessels are currently included.

Washington’s VTiP was established in 2014 and allows vessel owners and marina operators to apply to WA DNR to have their vessels selected for the program. Disposal is free if vessels are selected. WA DNR’s program received over 100 applications in its first two years. Where appropriate, the program helped owners find new homes for their vessels, keeping them out of the waste stream. The program destroyed broken-down vessels, avoiding thousands of dollars in future emergency response costs.

A VTiP program can remove vessels at a small fraction of the cost compared to when they are abandoned.

## Regarding lease terms at marinas

### **9. Reduce lease-period terms.<sup>12</sup>**

States should reduce lease-period terms. Currently, states have very different lease terms for activities on state-owned lands and waters; it may be important for each authority to look at reducing lease period terms. Shorter leasing duration terms could result in more knowledge of lease activities and ensuring resources exist for comprehensive site visits as renewal terms would be more frequent which may trigger lessee visits. Together, these actions could prevent problems at marinas and other lease sites before they start.

Oregon currently has 15-year leases, making frequent compliance checks difficult. Site visits may result in awareness of problems that have existed for some time. Due to this, the state of Oregon enacted a policy that site visits must occur at least once every three years. Still, if lease duration terms were reduced, tenants of concern could be potentially easier to remove, as contract renewal is not guaranteed. Limiting lease duration may prevent problematic tenants, as it is likely less legally problematic to not renew a lease than to terminate an active contract early.

WA DNR has recently switched to shorter lease terms, with an option to negotiate longer terms based on the needs of individual lease holders. Shorter leases are preferred to update newly developed tenant compliance requirements.

### **10. Limit or place restrictions on state government auctioning off or surplussing their own old vessels.**

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<sup>12</sup> Workgroup members have suggested five years.

State agencies have their own fleet of vessels that get surplused or auctioned off, often at extremely low prices. Many of these vessels are in dilapidated conditions and should be permanently retired from the water. Restrictions and limitations should be set so that these agencies are leading by example and are not contributing to the ADV problem.

This practice is fairly common (for example, CA OSPR was required to auction off one its older vessels) and can result in even more abandoned and derelict vessels needing to be addressed. WA is a good example of establishing restrictions on selling vessels (see RCW 47.01.470 and 47.01.47).

## Section V. Public Outreach and Education

### Overview

Public outreach, education and engagement is a fundamental component of a comprehensive ADV program. Effective outreach and education can help reduce and prevent ADV by raising awareness, encouraging compliance and preventive behaviors, and engaging the public with the issue at the local level.

### Gaps in ADV Public Outreach and Education (Key Findings from ADV White Paper)

Key findings from the White Paper on the topic of public outreach and education elements of ADV programs include:

- None of the ADV programs within the Task Force jurisdictions have a comprehensive public outreach/education component.
- Task Force jurisdictions currently rely on websites, social media, printed materials, and speaking engagements for ADV outreach and education. See Appendix F for a list of all Task Force jurisdictions' ADV websites.
- Most ADV programs do not conduct target audience research necessary to ensure effective outreach campaigns.
- Most programs rely heavily on partnerships with local municipalities and organizations for public engagement on ADV issues (such as the Alaska Marine Safety Education Association).
- There are numerous stand-alone outreach/education efforts that support certain aspects of ADV programs, such as vessel turn-in programs; etc.
- NOAA's marine debris program is a go-to resource for funding ADV outreach and education efforts, as well as informing the development of outreach strategies and tactics.

### Recommendations

1. **Develop a comprehensive, strategic ADV stakeholder outreach and engagement plan.**

All Task Force jurisdictions already have outreach/education elements related to ADVs, such as California's successful Dockwalker program. However, no jurisdictions have a comprehensive program addressing all aspects of ADV prevention, removal and deconstruction. A comprehensive plan that covers all of these aspects is crucial. Such a plan would include, at a minimum:

- a. Goals and objectives of outreach program.
- b. Stakeholder/audience identification and research using stakeholder mapping tools and conducting focus groups, surveys, and interviews.
- c. Key messages for each target audience.
- d. Outreach tactics and strategies, based on principles of social marketing and behavior change, designed for each target audience, to include (but not limited to):
  - i. Written materials such as fact sheets and brochures that reflect ADV basic facts (scope and scale of the problem, etc.), location of disposal facilities and disposal options, relevant rules and regulations, reporting requirements and mechanisms.
  - ii. Website that provides "one stop shopping" for all information about the program, including but not limited to: laws, grant opportunities, case studies and interesting stories, prevention information, compelling data (such as scope and scale of ADV problem), insurance requirements and vessel turn-in-program information.
  - iii. Social media.
  - iv. Leveraging ADV stories, especially on topics such as removals, turn-in events, and problem ADVs.
  - v. Host community-wide ADV removal events to leverage the cost of a single mobilization of contractor(s).
    - a) This can include vessel turn-in programs as part of ADV prevention as well as gathering locally abandoned vessels from shorelines and harbors for bulk deconstruction and disposal.
- e. Reporting mechanisms.
- f. Timeline for implementation.
- g. Deliverables.
- h. Evaluation. Increase accountability and effectiveness by including quantitative and qualitative evaluation in the plan.

NOAA's marine debris action plans for WA, OR, CA and HI have a wealth of relevant information for the development of comprehensive outreach and engagement programs and can be found here: <https://marinedebris.noaa.gov/emergency-response-guides-and-regional-action-plans#pub-term-145>

These stand-alone programs can serve as the building blocks for developing a comprehensive program.

2. **Build on/expand the numerous outreach/education programs already advanced by the Task Force’s Pacific Oil Spill Prevention Education Team (POSPET), and in place within Task Force jurisdictions.**

Numerous outreach programs are already in place across Task Force jurisdictions that are related to ADVs. For example, POSPET has been leading the highly successful SPILLS 911 campaign since the early 90s, in which member entities receive signage, brochures, and other materials for distribution/display in marinas across the west coast.

California’s Dockwalker program<sup>13</sup> has been extremely effective at reaching recreational vessel owners to prevent small spills, and is looked to by most other jurisdictions as a model. With a few additional resources, this program could be expanded to include ADV education materials.

## Section VI. Removal and Deconstruction

### Overview

Properly removing and disposing of ADVs is the most resource-intensive aspect of addressing them. A large number of complicated, expensive, and carefully orchestrated steps must come together for a vessel to be prepared for removal, removed, and then disposed of. Some of these steps include:

- legally seizing the vessel and any personal property
- cleaning up pollution
- procuring funding for removal and disposal
- securing permits for where and how the vessel may be deconstructed
- dealing with complex disposal logistics

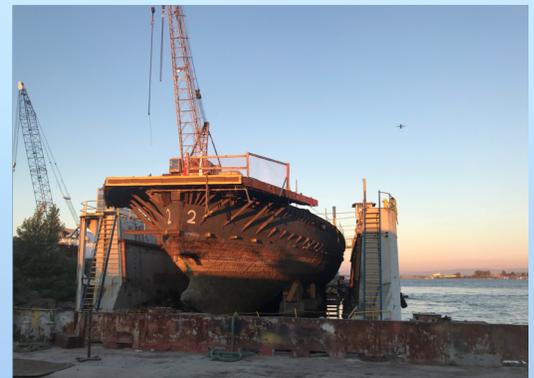
Each of these steps presents its own challenges and obstacles that take considerable planning, coordination, technical and contracting expertise, and funding.

### Gaps in ADV Removal and Deconstruction (Key findings from ADV White Paper)

While smaller recreation vessels can be put on a trailer and taken to a landfill, larger vessels and sunken vessels pose a much greater challenge. For large commercial or sunken vessels,

<sup>13</sup> [https://dbw.parks.ca.gov/?page\\_id=29199](https://dbw.parks.ca.gov/?page_id=29199)

### Case Study: F/V River Queen (OR)



The F/V River Queen, a 1922 former 230-foot automobile ferry, was too degraded to be safely towed. Due to its size, it had to be partially deconstructed on water in order to fit in a dry dock for safe transport. The only available dry dock large enough was located in Washington state, further increasing costs. *Photo: OR Dept of State Lands*

challenges include contracting; liability during removal; unanticipated project expansion (e.g. additional vessels or pollutants are discovered during removal); logistics of on-site deconstruction; shipyard availability; and permitting at both the removal *and* the deconstruction sites. Permitting can be especially challenging if there are no permanently permitted facilities for deconstructing large commercial vessels.

If dry docks are not available or are not large enough for the vessel, then shipbreaking activities must occur in the water. This can further complicate matters as it often requires local, regional, and multi-state agency approval.

As mentioned in the “Authorities” section, USCG will often assist when oil or hazardous materials are involved. Even when there is a threat of an oil spill rather than an active release, they can access the Oil Spill Liability Trust Fund. These funds, however, are limited to addressing the pollution threat only. Once the oil is removed, the USCG is obligated to cease involvement, even after deploying a crane barge to lift a vessel. In such instances, they may put the vessel back in the water, even though they have already incurred significant expenses to raise it.

During deconstruction, disposing hazardous and solid waste is an additional obstacle. Such waste may contain lead, PCB-laden paint, bunker C fuel, and asbestos. Local disposal sites may not be permitted to accept this type of waste, which means they must be trucked or barged elsewhere, sometimes to neighboring states. All of this requires careful planning, permitting, and additional disposal funds, as well as liability protection for responding agencies and cleanup operations.

The cost of vessel removal is highly variable depending on the size and age of the vessel and its location, among other criteria. Small recreation vessels may cost only a few hundred dollars, while commercial vessels requiring a dry dock may exceed over \$1 million. Due to this wide range of costs, state agencies are often left deciding between removing numerous small boats or removing a single large commercial vessel with their limited funds. Further, once a vessel sinks, removal costs can be up to ten times the estimated cost when the vessel was floating.

### Case Study: *Challenger*



The Tug Challenger, a 96-foot WWII tugboat owned by a local artist, sank in Gastineau Channel, Juneau Alaska, February 2016. The tug was deconstructed at a location of opportunity and cost the federal government over \$2 million. *Photo: Michael Penn, Juneau Empire*

## Recommendations

- 1. Publish and maintain a list of qualified (licensed, bonded, insured) vessel removal/recycling contractors.**

State agencies could publish and maintain a list of qualified (licensed, bonded, insured) vessel removal/recycling contractors and establish a state-wide price agreement. Washington State already has such a list, which could serve as a model.

Flat-rate contracts through each state's head contracting agency allowing pre-approved and vetted contractors would save time and potentially attract a larger pool of candidates. While state agencies may directly contract with a source, procurement rule limits often impede their ability to do so. This often results in states needing to go through a formal Request for Proposal (RFP) process, which is labor-intensive and often yields no bids and meanwhile worsening condition for the vessel of concern. If the central administrative agency approves and vets a list of contractors, it could expand the contractor list and the number or type of projects they may support. A streamlined direct approach would especially help in emergency situations or with smaller vessel removal. The state of California has emergency contracting procedures which can be tapped in instances such as that described above. These emergency procedures could also be modeled by other west coast jurisdictions.

**2. Ensure that responding agencies are covered with liability protection.**

States should ensure that responding agencies involved in cleanup operations have adequate liability protection.

**3. Encourage development of temporary permitted facilities for vessel deconstruction, including large commercial vessels.**

Long-term permitted facilities help prevent delays in procuring approval for shipbreaking activities at non-permitted or ad hoc locations. They also provide better environmental protection through hazardous materials management.

**4. Coordinate with USCG to establish a practice of "passing" contractors from USCG employment during the *pollution control phase of a response*, to state or local control for the *vessel salvage and deconstruction phase*.**

Using the equipment already deployed with federal funding during the pollution control phase will help reduce mobilization costs for state and local agencies during the deconstruction phase. This has already been done for small vessels in some instances and the practice could be expanded.

**5. Plan targeted local ADV removal events to leverage the cost of a single mobilization of contractor(s).**

This will allow for efficient gathering of abandoned vessels from a small defined area for bulk deconstruction and disposal.

**6. Establish safe and secure shore-side vessel storage and identify secure and appropriate places for vessels to be stockpiled for bulk deconstruction and disposal.**

States should establish safe and secure shore-side vessel storage and identify secure and appropriate places for vessels to be stockpiled for bulk deconstruction and disposal. This ensures that necessary shipments of oil waste to a landfill for disposal can be timed with local shipping fluctuations to take advantage of empty return barges or trucks, which are often available at lower rates.

With the restriction of EPA's Ocean Dumping Permit requirements, ADVs are most often deconstructed and disposed of in landfills. However, it isn't uncommon for the nearest landfill to be too small to accept the volume of waste associated with vessel deconstruction, even for relatively small vessels. This is especially true in Alaska, where communities are not always connected by roadways, which makes shipment of solid waste extremely expensive. Local governments should consider encouraging negotiation of a reduced rate at the community landfill for deconstruction and disposal of vessels before they sink. This is especially true in communities where the landfill is government owned and operated.

This can significantly reduce the costs for contractors to clean and deconstruct vessels for mobilization. Site security is an important consideration to ensure that stockpiled vessels, especially if stored whole, do not attract dumping of trash or hazardous materials, or individuals looking for shelter.

## **7. Establish a vessel recycling waste stream pilot project.**

Vessel recycling shows promise both as an environmentally responsible method of disposal for ADVs, as well as an economic resource for rural communities. Some states have successfully used wood and fiberglass waste as fuel for concrete and paper mill plants. Other endeavors have begun using wood and fiberglass waste as fiber material in new composite items like barriers, light poles, and manhole covers.

Rhode Island is exploring the feasibility of using fiberglass from vessels to heat kilns for fired cement. WA DNR is currently requesting an appropriation of about \$150,000 from the state legislature to conduct a pilot project to create a vessel recycling waste stream. The project would find possible streams and test their viability with actual vessels. If the project is successful, it could serve as a model elsewhere.

States should support pilot programs or research about other creative disposal options to reduce the waste stream associated with this issue.

To reduce pollution risk, vessels should only be stockpiled once hazardous materials, especially liquids, have been removed. Older vessels and larger commercial vessels are much more likely to have other hazardous materials onboard including lead and PCB-laden paint and asbestos. Many landfills are not permitted to accept RCRA or hazardous waste. Shipping hazmat to permitted landfills can substantially increase the cost of disposal.

## Section VII. Funding

### Overview

Funding is a major obstacle for every Task Force jurisdiction. The specific funding obstacles include:

- Funding to address legacy ADVs, e.g., the stockpile of ADVs that each jurisdiction currently has as a result of the complexity of the issue and the lack of funds to remove them as they become abandoned and derelict.
- Funding to address new ADVs on an annual basis within each jurisdiction.

The issue is further complicated by the huge difference in costs to remove recreational versus commercial ADVs, both legacy and new. The average cost to remove a recreational vessel, based on data from Washington and California, is approximately \$3,000. The cost to remove a large, sunken commercial vessel can reach well over \$1 million. Appendix E reflects Washington State's appropriated funds for their Derelict Vessel Removal Program (DVRP) each biennium and is a good indicator of the costs of running such programs.

Most jurisdictions have no dedicated ADV funding at all, and very few have funding to address both recreational *and* commercial ADVs. Therefore, developing an adequate ADV funding mechanism is complex, and requires that both legacy *and* new ADVs are addressed, as well as commercial *and* recreational ADVs.

Further complicating the issue is that most jurisdictions do not currently have comprehensive inventories of the scope and scale of their ADV problems. One jurisdiction that has begun to get a handle on it is California, which has conducted a detailed inventory of the Sacramento/San Joaquin Delta. Based on this inventory, and using average known removal and disposal costs, California estimates that **\$30 million is needed to remove the 52 existing, known commercial ADVs in the Sacramento/San Joaquin Delta.**

Given that commercial vessels are abandoned in this area at a rate of 1-2 per year, **approximately \$4 million is needed on an annual basis.**<sup>14</sup> Proposed prevention actions may reduce this need in the future.

In summary, large initial sums of money are needed to address the backlog of legacy ADVs, and smaller sums will be needed to address new ADVs on an annual basis. The need for ongoing funding could be minimized with effective vessel turn-in programs and other preventative measures. (See Section IV: Prevention)

### Gaps in ADV Funding (Key Findings of ADV White Paper)

- Washington, Oregon, and California all provide some state funds to local or state agencies for vessel removal; however, there are requirements that the lead agency pay for the removal up front and seek reimbursement later. This limits participation, excluding communities that cannot afford the initial costs.

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<sup>14</sup> This estimate is based on the average costs for removal and disposal and the scope of the ADV problem in the state.

- Removal costs are highly variable, with a distribution heavily skewed toward relatively inexpensive removals. A small, floating recreational boat that can be put on a trailer and hauled to a dump may cost as little as \$100 to remove. As vessels get larger and cannot be put on a trailer or sinks, the removal costs increase by several orders of magnitude.
- The average cost to remove a recreational vessel, based on data from Washington and California, is about \$3,000. The cost to remove a large, sunken commercial vessel can reach over \$1 million.

## Recommendations

Recommendations for Task Force jurisdictions to develop sustainable funding for their ADV programs reflect three categories: amounts, structure, and sources.

### Funding amounts

#### 1. Establish sufficient funds to address both recreational and commercial ADVs. This fund should address both legacy and future ADVs.

An annual budget is recommended to immediately begin a response to legacy ADVs already identified as high risk or active threats for pollution, waterway safety or traffic, or public safety. The budget should be adjusted up or down as the scope of the problem is better documented. It is likely to take up to a decade to fully address legacy ADVs.

Following a 5 to 10-year effort to eliminate legacy ADVs, jurisdictions should expect to need \$1-\$5 million annually to remove new ADVs.

In jurisdictions that have data about legacy and new ADVs, a simple formula to establish an initial, adequate funding pot, is:

$[(\$3,000 \times \text{average \# of recreational vessels abandoned each year}) + (\$1 \text{ million} \times \text{average number of commercial vessels abandoned each year})] + [(\$3,000 \times \text{\# of legacy recreational vessels}) + (\$1 \text{ million} \times \text{number of legacy commercial vessels})]$  (adjusted for inflation annually)

Once the legacy ADVs have been addressed, the formula can revert to:

$[(\$3,000 \times \text{average \# of recreational vessels abandoned each year}) + (\$1 \text{ million} \times \text{average number of commercial vessels abandoned each year})]$  (adjusted for inflation annually)

**Note:** In Alaska, given the remoteness of its shorelines and harbors, average removal and disposal costs are likely 1.5 to 2 times that of the averages listed above.

### Funding structures

#### 2. Establish a quick and flexible mechanism for moving funds from the state to the agencies.

Establish a process to move state funds to the local level as quickly as possible. ADV removal is frequently a matter of urgency; therefore, the process of allocating state funds must be reliable and efficient. Do not require local agencies to front the money and get reimbursed later. Establish a mechanism for the state to distribute funds quickly and upfront if needed. However, also allow for reimbursement if the local agency moves first.

**3. Develop a program that requires the companies that built, and make profit, from commercial vessels finance some or all of the future disposal of the vessel.**

States should develop programs that requires the companies that built, and make profit, from commercial vessels finance some or all of the future disposal of the vessel.

The common story across the country is commercial vessels are built by profitable and financially capable companies and sold on to progressively smaller, and often less financially capable, owners. Ultimately, we find formally commercial vessels owned by individuals or small businesses ill-suited to deal with the liability and cost of deconstruction and disposal of such vessels. This type of program would be best suited at the federal level to ensure compliance regardless of vessels crossing state lines. Barring that it is possible for adjacent states to enter reciprocal agreements supporting similar programs in multiple individual states.

## Funding sources

**4. Establish a reliable annual funding mechanism.**

Some revenue-generating alternatives include:

1. Washington collects ADV funds from vessel registration, \$800,000 annually from their approximate 250,000 recreational vessels and 1,700 commercial vessels. Recreational vessels are charged a \$3 fee per year while commercial vessels are charged \$1/linear foot per year.
2. California collects ADV funds from a marine fuel surcharge, thus apportioning payment based on vessel use, not vessel ownership.
3. Other states use annual appropriations of general funds, or funds associated with clean water programs.

## Other

**5. Allow government agencies to seek cost recovery from financially-viable responsible parties.**

### Case Study: Black Kite



In 2014 and 2015, the USCG spent \$90,000 responding to the Black Kite and Black Hawk, two 122' tugs found derelict and drifting in San Francisco Bay, and then found sinking at the dock. The tugs reverted to the City of Richmond, who used the US Federal Marshals to auction them. The Black Kite was sold for \$1 to a local artist. Within months of the sale, both California and the USCG were responding to the threat of an oil spill from the vessel. *Photo: USCG*

States (or local entities in some instances) need the authority to recover the costs of government-funded vessel removal efforts from the current, and potentially past, vessel owners.

Funding for VTiPs could come from leasing activity fees; non-compliance vessel information reporting fines, and gas taxes. A per gallon fee on marine diesel sales could help fund the program so larger and more active boats pay a larger fee than smaller or less used boats creating a “pay to play” system. California raises about \$2 million per year through fuel surcharges on marine fuel which helps fund their vessel turn-in program.

- 6. **Establish a mechanism for local law enforcement agencies to be funded or compensated for time and equipment needed to enforce vessel registration and aquatic laws, and to issue civil penalties.**

Enforcement of current laws would reduce the number of derelict and abandoned vessels. There is limited capacity in local law enforcement to conduct this enforcement.

- 7. **Allow states agencies to issue grants<sup>15</sup> to local law enforcement agencies to compensate for time and expenses related to ADV cleanup.**

## Section IX: Recommendations for Federal Partners

Table 2 includes a summary of recommendations that the Task Force has identified for federal agencies. These recommendations include changes to existing federal laws and agency rules that contribute to ADV problem for west coast states and are recommended in order to more effectively partner and collaborate to comprehensively address ADVs across the west coast states.

**Table 2. Recommendations for Federal Partners**

Topic	Issue	Recommendation
<b>Applicable Agency: Multiple</b>		
Surplus / auction off old vessels.	The federal government surpluses and auctions off vessels from its fleet as well as seized vessels, often at extremely low prices. Many of these vessels are in dilapidated condition and should be permanently retired from the water. As illustrated by the case of the <i>Black Kite</i> (see insert at right), these vessels often become ADVs because new owners cannot keep up with expensive maintenance and repairs. Restrictions and limitations should be set so that federal agencies are leaders in preventing ADVs, rather than contributors to the problem.	1. Establish requirements of new owners buying used federal vessels, such as proof of insurance and bonds, and proof of financial resources to address maintenance needs.

<sup>15</sup> \$20,000-\$50,000 is recommended by the Workgroup

Topic	Issue	Recommendation
Dedicate federal funding to support state ADV programs.	The problem of ADVs is growing across all west coast states. It is increasingly expensive and complicated to address and requires multiple authorities and coordination efforts to tackle. Existing state funding is currently insufficient. The federal government has a significant source of funding in the OSLTF and provides some very limited funding to state ADV programs via the Marine Debris Removal grant program.	2. Provide dedicated federal funding to support states in their efforts to address ADVs.
<b>Applicable Agency: USCG</b>		
Modify the vessel adrift rule.	To alleviate an undue burden on private moorage facilities, the USCG should deposit vessels under tow to the nearest <u>public</u> safe haven. Current rule (4.1.6.5 – Safe Haven Considerations) tows disabled vessels to the nearest safe haven and salvages them there. The assumption is that the nearest haven is willing to accept the vessel and is in contact with the USCG. Instead, parties are often surprised to find vessels moored at their facility with no recourse, as the vessel owner is frequently unknown.	3. Create a policy to prevent derelict vessels.
Streamline contractor response during ADV response phase transition (federal to state/local).	Using the equipment already deployed with federal funding during the pollution control phase will help reduce mobilization costs for state and local agencies during the deconstruction phase. Transitioning contractors has already been done in some instances for small vessels and the practice could be expanded.	4. Establish a policy of “passing” contractors from USCG employment after the <i>pollution control phase of a response</i> to state or local control for the <i>vessel salvage and deconstruction phase</i> .
Expand Oil Spill Liability Trust Fund (OSLTF) funding beyond the pollution phase to include for removal and disposal.	The USCG can access OSLTF funding and mobilize significant resources for the pollution response phase of an ADV situation. However, their authority frequently ends once the pollution is removed, leaving ADVs in place for state and local authorities to address. This practice, referred to as “catch and release”, is extremely inefficient and expensive.	5. In instances where the USCG accesses the OSLTF for the pollution response phase of an ADV, these funds should also be available for the removal and disposal phase.
USCG vehicle documentation and flyover photos of vessels.	USCG vehicle documentation and flyover photos of vessels should also include vessel location. This information is not currently shared with states.	6. Use USCG vessel data and provide to state(s) for their own inventory, GIS layer, enforcement, etc.

## Section X: Next Steps

Once the Blue-ribbon program is finalized, the Task Force will engage its numerous partners in conversations about how best to implement the recommendations. This may include some or all of the following activities:

- Meet with individual federal agencies to discuss federal recommendations and next steps.
- Host a round-table with ADV experts to discuss the Blue-ribbon program's recommendations and map a path forward for implementing the recommendations
- Develop a cohesive ADV outreach and education program that can be tailored by each jurisdiction's individual ADV program and program elements. This could include (but not be limited to) developing a suite of "Spills 911"-type outreach materials for distribution to recreational vessel owners via existing networks and programs (such as Dockwalkers), and developing outreach materials for state legislators and others in key positions to help implement recommendations in this report.
- Report on implementation/results.

## **APPENDICES**

## A. Definitions

For the purposes of this document, the following terms are defined.

**Abandoned** - the legal condition of the vessel, in terms of ownership.

**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.

**Aquatic land custodian** - owner or lessee of the aquatic land either fresh or salt water.

**Bunker C Fuel** - the residual oil left over after the lighter, more volatile products (gasoline, #2 diesel, natural gas) are distilled out of the crude oil.

**Commercial vessel** - is defined by the United States Coast Guard as any vessel (i.e. boat or ship) engaged in commercial trade or that carries passengers for hire.

**Commercial/Recreational** - the original intent of the vessel usage as built (e.g. an old tug converted to a houseboat would be a commercial vessel).

**Derelict** - the physical condition of the vessel, in terms of seaworthiness.

**Financial responsibility** - refers to the proof or demonstration that a responsible party is able to pay for the costs and damages of a spill up to a specified amount. Typically, financial responsibility is evidenced by an insurance policy or Pollution and Indemnity (P&I) club documents, but also may involve surety bonds, guarantees, letters of credit, or qualification for self-insurance.

**Recreational vessel** - meets every description of non-commercial watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. This does not include inner tubes, air mattresses, and small rafts or flotation devices or toys customarily used by swimmers.

**Seaworthy** - means that a vessel and its equipment are physically fit and in full working order, able to encounter and withstand the ordinary perils of the sea during its contemplated use, and suitable for its intended purpose.

**Secondary liability** - refers to the responsibility of a person or entity that arises when the party directly liable fails to perform a duty.

## B. Summary Table of Recommendations for States

#	RECOMMENDATION	Examples of effective programs (if applicable)	Resources (if applicable)
<b>AUTHORITY</b>			
1	Ensure broad responsibilities within ADV programs.	WA State DNR - Derelict Vessel Removal Program (DVRP).	
2	Empower local (e.g. county, city, Ports, etc.) authorities to remove ADVs.		
3	Mandate adherence to due process.	WA State Statute	<a href="https://pccharbormasters.org/wp-content/uploads/2016/11/derelict-vessel-removal-troy-wood-wa-dnr.pdf">https://pccharbormasters.org/wp-content/uploads/2016/11/derelict-vessel-removal-troy-wood-wa-dnr.pdf</a>
4	Empower agencies to dispose of ADVs in publicly beneficial ways.		
5	Ensure that the agency with removal authority can remove any vessel, whether commercial or recreational	WA State DNR- DVRP	
6	Empower private property owners to declare vessels abandoned or derelict.		
7	Extend ticketing authority to state agencies to enforce vessel registration and other aquatic laws.		
<b>PREVENTION</b>			
1	Establish a vessel registration system, including fees and adequate enforcement, for both recreational and commercial vessels	WA State DNR - DVRP	
2	Establish a comprehensive database to track and (potentially) prioritize ADVs		

<b>PREVENTION</b>			
3	Require wreck removal insurance above the value of the vessel for both recreational and commercial vessels.	WA State DNR - DVRP	RCW 79.100.110.
4	Require surety or performance bonds for vessel removal and repair.	Port of Port Townsend (WA) and Port of Bremerton (WA)	
5	Require surety bonds for those lessees that are conducting marine industrial activities such as fish processing, vessel repair, and emergency response with larger ocean-going vessels such as barges and tugs.	CA and WA	
6	Implement a bond requirement for commercial vessels for disposal costs during initial construction and registration.		
7	Establish Secondary Liability laws for vessels larger vessels and require a vessel survey to assess seaworthiness of all larger and older vessels prior to vessel sales.	WA State Statute.	RWC 79.100.040 (See Appendix D).
8	Establish a vessel turn-in program.	WA State DNR and CA State Parks Division of Boating and Waterways (DBW)	
9	Reduce lease-period terms.	WA DNR	
10	Limit or place restrictions on state government auctioning off or surplussing their own old vessels.		
<b>PUBLIC OUTREACH AND EDUCATION</b>			
1	Develop a comprehensive, strategic ADV stakeholder outreach and engagement plan.	NOAA Marine Debris Action Plans for WA, OR, CA and HI	
2	Build on/expand the numerous outreach/education programs already advanced by the Task Force's Pacific Oil Spill Prevention Education Team (POSPET), and in place within Task Force jurisdictions.		

REMOVAL AND DECONSTRUCTION		
1	Publish and maintain a list of qualified (licensed, bonded, insured) vessel removal/recycling contractors.	WA and CA
2	Ensure that responding agencies are covered with liability protection.	
3	Encourage development of temporary permitted facilities for vessel deconstruction, including large commercial vessels	
4	Coordinate with USCG to establish a practice of “passing” contractors from USCG employment during the pollution control phase of a response, to state or local control for the vessel salvage and deconstruction phase.	
5	Plan targeted local ADV removal events to leverage the cost of a single mobilization of contractor(s).	
6	Establish safe and secure shore-side vessel storage and identify secure and appropriate places for vessels to be stockpiled for bulk deconstruction and disposal.	
7	Establish a vessel recycling waste stream pilot project.	Rhode Island and WA DNR.
FUNDING		
1	Establish sufficient funds to address both recreational and commercial ADVs. This fund should address both legacy and future ADVs.	
2	Establish a quick and flexible mechanism for moving funds from the state to the agencies.	
3	Develop a program that requires the companies that built, and make profit, from commercial vessels finance some or all of the future disposal	

FUNDING			
4	Establish a reliable annual funding mechanism.	WA DNR; CA DBW.	
5	Allow government agencies to seek cost recovery from financially-viable responsible parties.	CA DBW.	
6	Establish a mechanism for local law enforcement agencies to be funded or compensated for time and equipment needed to enforce vessel registration and aquatic laws, and to issue civil penalties.		
7	Allow states agencies to issue grants to local law enforcement agencies to compensate for time and expenses related to ADV cleanup.		

## C. WA State’s Due Process Requirements

### Legal notice requirements:

(Process overview – not comprehensive):

1. Day 0 – place a notice on the vessel and send a copy to DNR so we can place it on the department’s website.
2. Day 1 to 7 – Letter of intent to gain custody sent by both registered and regular mail addresses to last registered owner(s) and any lien holder(s) on record.
3. Day 10 to 20 – publish once, a notice, in a newspaper of general circulation for the county in which the vessel was found.
4. Owner Liability. If the owner does not take action to remove a vessel declared derelict or abandoned, he or she may be liable for costs such as:
  - a. Administrative costs incurred in the custody action.
  - b. Removal and disposal costs.
  - c. Costs associated with environmental damages directly or indirectly caused by the vessel.
5. The owner **may also be subject to a criminal misdemeanor** charge for causing a vessel to become abandoned or derelict.

### RWC 79.100.040 - An authorized public entity must:

- (a) Mail notice of its intent to obtain custody, at least twenty 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 lienholders 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;

- (b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and
- (c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) 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 as provided in RCW 79.100.030, the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW 79.100.060.

(3) (a) Any authorized public entity may tow, beach, or otherwise take temporary possession of a vessel if the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel and if the vessel:

- i. Is in immediate danger of sinking, breaking up, or blocking navigational channels; or
- ii. Poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination.

(b) Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department or the United States 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 seven 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 in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the vessel as authorized in RCW 79.100.050.

## D. WA State's Secondary Liability Insurance Information

WA State Agencies must title and register vessels prior to selling them. The registration requirement makes the State Agencies subject to the transfer law and its secondary liability. RCW 79.100.150

Transfer of certain vessels—Vessel inspection—Secondary liability.

- (1) A vessel owner must obtain a vessel inspection under this section prior to transferring a vessel that is:
  - (a) More than sixty-five feet in length and more than forty years old; and
  - (b) Either:
    1. Is registered or required to be registered under chapter 88.02 RCW; or
    2. Is listed or required to be listed under chapter 84.40 RCW.
- (2) If the vessel inspection determines the vessel is not seaworthy and the value of the vessel is less than the anticipated costs required to return the vessel to seaworthiness, then the vessel owner may not sell or transfer ownership of the vessel unless:
  - (a) The vessel is repaired to a seaworthy state prior to the transfer of ownership; or
  - (b) The vessel is sold for scrap, restoration, salvage, or another use that will remove the vessel from state waters to a person displaying a business license issued under RCW 19.02.070 that a reasonable person in the seller's position would believe has the capability and intent to do based on factors that may include the buyer's facilities, resources, documented intent, and relevant history.
- (3) Where required under subsection (1) of this section, a vessel owner must provide a copy of the vessel inspection documentation to the transferee and, if the department did not conduct the inspection, to the department prior to the transfer.
- (4) Unless rules adopted by the department provide otherwise, the vessel inspection required under this section must be contained in a formal marine survey conducted by a third party to the transaction. The survey must include, at a minimum, a conclusion relating to the seaworthiness of the vessel, an estimate of the vessel's fair market value, and, if applicable, an estimate as to the anticipated cost of repairs necessary to return the vessel to seaworthiness.
- (5) The department may, by rule, allow other forms of vessel condition determinations, such as United States coast guard certificates of inspection, to replace the requirements for a formal marine survey under this section.
- (6) *Failure to comply with the requirements of this section will result in the transferor having secondary liability under RCW 79.100.060 if the vessel is later abandoned by the transferee or becomes derelict prior to a subsequent ownership transfer.*
- (7) Nothing in this section prevents a vessel owner from removing, dismantling, and lawfully disposing of any vessel lawfully under the vessel owner's control.

RCW 47.01.475

Transfer of ownership of department-owned vessel—Further requirements.

- (1) Following the inspection required under RCW 47.01.470 and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:
  - (a) The purposes for which the transferee intends to use the vessel; and

- (b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.
- (2) (a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.
  - (c) However, the department may transfer a vessel with:
    - (i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and
    - (ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.
  - (d) The department may consult with the department of ecology in carrying out the requirements of this subsection.
- (3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

RCW 79.100.060

Reimbursement for costs.

- (1) The owner of an abandoned or derelict vessel, or any person or entity that has incurred secondary liability for an abandoned or derelict vessel under this chapter or RCW 88.26.030, 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 under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted in RCW 79.100.030, all administrative costs incurred by the authorized public entity during the procedure set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. 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.
- (2) Reimbursement for costs may be sought from an owner, or any person or entity that has incurred secondary liability under this chapter or RCW 88.26.030, who is identified subsequent to the vessel's removal and disposal.
- (3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized public entity within thirty days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department 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.

## E. WA State: Appropriated Funds for the DVRP, per biennium

Table 3

Biennium	DVRA	Additional Appropriation	Number of APE Reimbursements	Reimbursement Total Cost	Average Reimbursement Cost
03-05	\$1,028,000.00	\$0.00	11	\$144,659.12	\$13,150.83
05-07	\$1,037,000.00	\$0.00	55	\$555,635.31	\$10,102.46
07-09	\$1,554,000.00	\$3,000,000.00	53	\$1,016,956.96	\$19,187.87
09-11	\$1,045,800.00	\$765,000.00	32	\$211,835.00	\$6,619.84
11-13	\$1,645,800.00	\$3,000,000.00	43	\$318,421.65	\$7,405.15
13-15	\$1,602,200.00	\$4,828,955.00	27	\$232,902.38	\$8,626.01
15-17	\$1,930,000.00	\$0.00	35	\$504,850.24	\$14,424.29
17-19	\$1,946,000.00	\$0.00	70	\$1,240,136.50	\$17,716.24
19-21	\$2,001,000.00	\$2,500,000.00			

Table 4: Summary of Revenue Proposals

<i>Options</i>	<i>% of Excise Tax</i>	<i>Rec vessel fee</i>	<i>Comm vessel per/ft</i>	<i>Biennial total</i>
1	14%	\$3	\$1	\$6,179,592
2	13%	\$3	\$3	\$6,201,112
3	12%	\$3.50	\$3	\$6,127,444
4	12%	\$3.50	\$2	\$5,955,444
5	11%	\$4	\$3	\$6,053,776

## F. Links to ADV websites for Task Force jurisdictions

JURISDICTION	WEBSITE	FOCUS/CONTENT
<b>Alaska</b>	<a href="http://www.alaskaharbors.org/Derelict-Vessels">http://www.alaskaharbors.org/Derelict-Vessels</a>	Laws, registration, reporting.
	<a href="http://www.alaskacleanharbors.org/derelict-vessels/">http://www.alaskacleanharbors.org/derelict-vessels/</a>	Laws, task force work, reporting, case studies, news.
<b>Washington</b>	<a href="https://www.dnr.wa.gov/derelict-vessels">https://www.dnr.wa.gov/derelict-vessels</a>	Laws, funding, removals, requirements, reporting, vessel turn-in program, inventory. <a href="#">Brochure</a> . <sup>16</sup>
<b>Oregon</b>	<a href="https://www.oregon.gov/osmb/boater-info/Pages/Abandoned-Derelict-Boats.aspx">https://www.oregon.gov/osmb/boater-info/Pages/Abandoned-Derelict-Boats.aspx</a>	Definition, prevention, reporting, removal, funding, recycling, turn-in grants, commercial ADV task force.
<b>California</b>	<a href="https://dbw.parks.ca.gov/?page_id=28816">https://dbw.parks.ca.gov/?page_id=28816</a>	Grants, turn-in program, disposal, recycling/dismantling, clean boating, laws, salvage, publications. <a href="#">Poster (.doc)</a> . <sup>17</sup> <a href="#">Fact sheet</a> . <sup>18</sup>
	<a href="https://www.slc.ca.gov/abandoned-vessels-program/">https://www.slc.ca.gov/abandoned-vessels-program/</a>	Laws, news, removal, stories.
<b>Hawai'i</b>	<a href="https://dlnr.hawaii.gov/marine-debris/">https://dlnr.hawaii.gov/marine-debris/</a>	Marine debris – reporting, tsunami, invasive species, volunteering, news.

<sup>16</sup> [https://www.dnr.wa.gov/publications/aq\\_derelict\\_vessel\\_broch.pdf](https://www.dnr.wa.gov/publications/aq_derelict_vessel_broch.pdf)

<sup>17</sup> [https://dbw.parks.ca.gov/pages/28702/files/8.5x11\\_interactive\\_IS\\_YOUR\\_BOAT\\_AN\\_ANCHOR\\_POSTER.docx](https://dbw.parks.ca.gov/pages/28702/files/8.5x11_interactive_IS_YOUR_BOAT_AN_ANCHOR_POSTER.docx)

<sup>18</sup> [https://dbw.parks.ca.gov/pages/28702/files/2014dbw\\_vtip\\_weblayout.pdf](https://dbw.parks.ca.gov/pages/28702/files/2014dbw_vtip_weblayout.pdf)