



# Oregon

John A. Kitzhaber, MD, Governor

## State Marine Board

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February 14, 2013

House Committee on Agriculture and Natural Resources  
The Honorable Brad Witt, Chair  
The Honorable Sal Esquivel, Vice Chair  
The Honorable Caddy McKeown, Vice Chair

RE: Testimony on House Bill 2233

Dear Committee Chair, Vice Chairs and Members,

This bill modifies the section of Chapter 830, *Small Watercraft*, related to the process for seizing and disposing of abandoned vessels. The bill will allow "enforcement agencies" to seize and dispose of derelict vessels (vessels in a condition that constitutes a hazard) and will expand the criminal offense language in the statute to include "the failure to remove an abandoned vessel and possession of a derelict vessel on the waters of this state."

In addition, this bill modifies definitions in Chapter 466, *Hazardous Waste and Hazardous Materials II*, and Chapter 468b, *Water Quality*, to include "ships in imminent danger of sinking" in the definition of threatened spill or release of oil or hazardous material.

There are four issues House Bill 2233 identifies and proposes to remedy.

### **ISSUE #1: Ports and law enforcement are not always willing or able to act as removing authorities**

The ability of a public agency to remove an abandoned vessel from their property is hindered by the limited definition of "removing authority." Currently the definition of a "removing authority" in ORS 98.245, *Disposition of unclaimed property; notice of pending disposition; procedure*, identifies the "removing authority" as "a sheriff's office, a municipal police department, a state police office, a law enforcement agency created by intergovernmental agreement, or a port." There is reluctance on part of law enforcement to remove an abandoned vessel from the property of a public agency due to time, expense and liability.

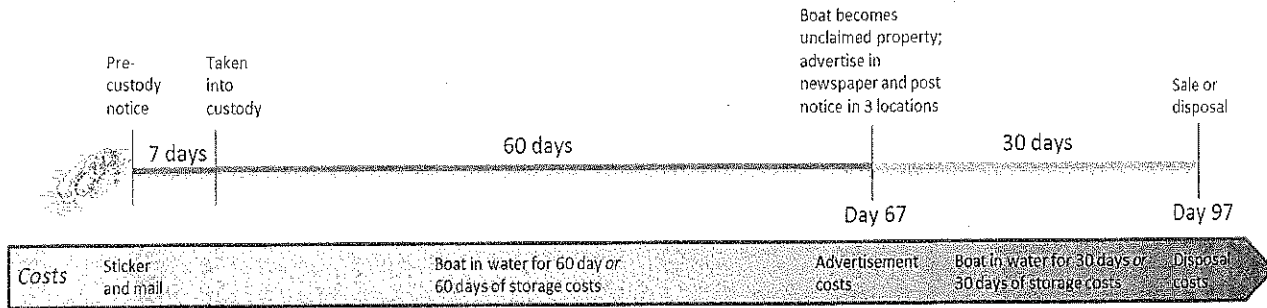
**Solution:** Eliminate the use of "removing authorities" defined in ORS 98.245. Instead, define "enforcement agency" in Chapter 830, to include all public agencies who have responsibility for the land or water on which an abandoned vessel or a derelict vessel is located. This proposed solution is similar to the abandoned vehicle statutes which define "removing authorities" in ORS 819.140, *Agencies having authority to take vehicle into custody; powers of agency taking custody*.

### **ISSUE #2: The seizure and notification process is long and burdensome**

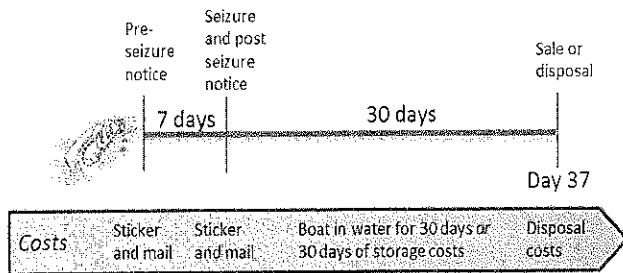
The current notification, seizure and disposal process for abandoned vessels is more than 90-days, longer if there is a challenge to the proceedings (see graphic below). For comparison, abandoned motor vehicles can be disposed of within 30-days (ORS 819.210). Removal of abandoned vessels is a burdensome undertaking. Often, vessels are too large to be trailered or are so dilapidated that they can't be removed without destroying them; consequently, the vessels are left in the water at least for an additional 90-day period.



**Current process: ORS 830.912, 830.927, 98.245**



**Proposed process: HB 2233**



**HB 2233 saves money and protects the environment:**

- Allows the Marine Board to use the salvaged vessel fund as soon as vessel meets the definition of "abandoned" or "derelict," and to recover costs from the owner of the vessel.
- Authorizes the salvaged vessel fund to be used for a vessel turn-in program to encourage owners to surrender vessels before they become a navigational hazard or environmental threat.

**Solution:** Reduce the notification process to 30-days for abandoned vessels valued at \$501 or more and 15-days for abandoned vessels valued at \$500 or less. This process is similar to ORS 819.215 "Disposal of vehicle appraised at \$500 or less," where only written notice to the "the registered owner and secured parties," is required, and the vehicle can be sent to a dismantler 15-days after notification. A reduction in the processing time lessens the environmental threat posed by abandoned vessels and custody costs.

**ISSUE #3: "Enforcement agencies" have difficulty in meeting the 25% match requirement**

The Marine Board's Abandoned Boat Removal and Cleanup subaccount is authorized to pay for the expenses of the Board or reimbursing an "enforcement agency" for no more than 75% of the removal and disposal costs of abandoned vessel. This reimbursement is only payable if the "enforcement agency" has been unsuccessful in collecting reimbursement from the vessel's owner. Consequently, an enforcement agency must initially pay for any salvage, removal, clean-up, and disposal cost, document that the owner cannot reimburse, and then request, at most, 75% reimbursement from the Marine Board. Current removal authorizes are reluctant to remove abandoned vessels due to the initial cash outlay, the burden of collection, and the required 25% funding match.

**Solution:** Lower the match requirements for the enforcement agencies. The State of Washington and the State of California both reimburse up to 90% of the total costs to eligible enforcement agencies. The coordinator for the Washington program said that they have had more interest in their program, and more proposals, since their match requirement was lowered from 25% to 10%.

As the Oregon Abandoned Vessel Account is funded by recreational boat registration fees, it may be reasonable to lower the match requirement for the removal of recreational boats (those registered with the Marine Board) to 10%, while retaining the 25% match requirement for commercial boats (i.e. out-of-service fishing vessels).

**ISSUE #4: Waiting for a vessel to be abandoned is expensive and inefficient**

Abandoned vessels almost always are in an "unseaworthy" condition for months or years, posing a hazard to navigation and a threat to the environment. Additionally, if the vessels deteriorate to the point that they are submerged, the removal costs are 3 to 4 times higher. It would be more cost-effective to intervene earlier and have a process that compels owners to remedy the derelict condition of their vessels or remove them from state waters. Furthermore, since use of the Abandoned Boat Removal and Cleanup subaccount is currently limited to post-abandonment and removal reimbursements, the agency is not able to be proactive and reimburse for the removal of "derelict" vessels when they would be less expensive to remove.

**Solution:** Add definitions for "abandoned vessel" and "derelict vessel" and specify that both types of vessels can be seized and removed if remedy or removal action is not taken by the owner. Make it a criminal offense to fail to remove an abandoned vessel after notification or fail to remedy the derelict condition of a vessel after notification. Expand the use of the Abandoned Vessel subaccount (re-named Salvaged Vessel subaccount) to pay for derelict vessel seized by enforcement agencies or surrendered by their owners. Allow the Salvaged Vessel subaccount to be used for a "Vessel Turn In Program" to remove vessels before they are abandoned. The state of California has in place a successful pilot "Vessel Turn-In Program" (VTIP) that removes at-risk vessels at a fraction of the cost of removing abandoned vessels. Recent figures from California show that abandoned boats cost on average \$4,162 to remove, whereas, boats surrendered through VTIP cost on average, \$1,604 - a savings of 62%. Additionally, agencies that participate in California's VTIP report a savings in staff time of 40% - 75% compared to the time needed to deal with abandoned vessels.

In closing, the Marine Board is ready to remove procedural obstacles that prevent removing abandoned and derelict vessels from state waters utilizing the funds already allocated for this purpose. HB 2233 will allow the Marine Board and enforcement agencies to be proactive, work with vessel owners, offer surrender options to minimize costs, and provide environmental protection and safety to all boaters.

Please allow me to address any questions you may have.

Sincerely,



Scott Brewen, Director

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## Section by section explanation of the revisions:

### **Section 2 (replaces 830.907): Definitions**

Adds the definitions of "abandoned vessel," "derelict vessel," "enforcement agency," "owner," and "vessel."

Current statutes only define the "offense of abandoning a boat, floating home or boathouse". There is no definition of "abandoned boat" and no distinction between abandoned and derelict vessels. The "offense of abandoning a boat" implies that an abandoned boat is one that is believed to be "abandoned" and has been "left" on public or private property without permission. Merriam-Webster dictionary defines "abandon" as "to give up with the intent of never again claiming a right or interest in." However, if the owner is still very much involved with the vessel (perhaps visiting or even living on the vessel), it is more difficult to make the argument that the vessel has been "abandoned," even if it is at risk of sinking, causing pollution, or is a hazard to navigation.

Therefore, in addition to adding a definition of "abandoned vessel," the new language expands on the idea of a hazardous vessel and defines that as a "derelict." "Derelict vessel" is a vessel that is on the waters of this state and that is sunk or in imminent danger of sinking; obstructing a waterway; endangering life or property; in danger of becoming an environmental hazard because of leaking fuel, sewage or other pollutants; or is a boat that is not seaworthy.

Currently the definition of a "removing authority" in ORS 98.245, defines "removing authority" as "a sheriff's office, a municipal police department, a state police office, a law enforcement agency created by intergovernmental agreement, or a port." New language in ORS 830 will define "enforcement agency" is a law enforcement agency, a federal agency, the State Marine Board or any other public body, as defined in ORS 174.109, that has responsibility for land or water on which an abandoned vessel or a derelict vessel is located.

### **Section 3 (replaces 830.912): Authority to seize abandoned or derelict vessel**

The current statute gives removing authorities the power to seize vessels that are believed to be abandoned after the required notification. The new language clarifies that an enforcement agency can seize an abandoned vessel if it is not moved to a lawful location in the time specified in the notice or can seize a derelict vessel if the problems identified in the notice are not corrected in the time specified in the notice.

The new language also clarifies the actions an enforcement agency can take once a vessel is identified as abandoned or derelict, including entering and inspecting the vessel for the purpose of identifying the ownership of the vessel or for the purpose of assessing whether the vessel poses a threat to life, property or the environment; securing the vessel in such a manner as to prevent harm to life or damage to property or to prevent the vessel from becoming a hazard to navigation; taking action to mitigate any environmental threat the vessel poses; and salvaging, towing and storing the vessel.

### **Section 4 (replaces 830.917): Preseizure notice**

The new language would expand on the information required in the current notice to include statements that

- vessels that are believed to be abandoned must be moved to a lawful location in the time specified or the owner may be prosecuted for the crime of failure to remove an abandoned vessel;
- If the vessel is derelict, the problems noted in the notice must be remedied by the time specified or the owner may be prosecuted for the crime of possession of a derelict vessel; and
- If a vessel is seized, the owner of the vessel will be liable for the costs of salvage, towing, and storage and the vessel may be destroyed or sold if those costs are not paid.

### **Section 5 (replaces 830.914): Seizure without notice**

The current statutes give the authority to enforcement agencies to immediately seize, without notice, vessels that are a hazard or obstruction. The new language states that nothing in these statutes affects the ability of an enforcement agency to seize without notice a vessel that presents a hazard to navigation or a threat to public health or safety (i.e. an emergency situation). However, if an enforcement agency wants to dispose of a vessel seized without notice, the enforcement agency must follow the post-seizure notification provisions.

### **Section 5a (new language): Manner and time of seizure**

In the current statutes it is not clear how and when enforcement agencies "take custody" of vessel, so new language will clarify that seizure occurs when the enforcement agencies takes physical control of vessel (by towing or other means) or when the vessel is marked with a seizure sticker or buoy (for sunk vessels).

### **Section 6 (replaces part of 98.245): Post seizure notice**

The current statutes do not require a post seizure notice; rather they require that vessels be advertised as "unclaimed property in the possession of a law enforcement agency" in a newspaper and in three locations in the area. The new language will require a post-seizure notice be placed on a website maintained by the enforcement agency and mailed to the last know owner of the vessel.

The post seizure notice will re-state the information in the pre-seizure notice:

- \* the time that the vessel was seized, the name, address and telephone number of the enforcement agency, and the reason the vessel was seized;
- \* the owners of the vessel are liable for salvage, towing, storage and disposal costs incurred by the enforcement agency by reason of the seizure, and the amount of those costs that have accrued as of the date of the notice;
- \* title to the vessel will vest in the enforcement agency if the costs of salvage, towing and storage are not paid, and the date by which those costs must be paid;
- \* the owner may request a hearing to challenge the reasonableness of any salvage, towing or storage costs, and the time and manner for requesting a hearing; and
- \* the vessel and its contents may be immediately reclaimed by presenting proof of ownership or right to possession and payment of the costs that have accrued.

### **Section 7 (replaces 830.924): Hearing**

While the hearing process is essentially the same, the section was re-written for clarity and brevity. An additional clarification was made that if the enforcement agency is a state agency, the determination of the enforcement agency is an order other than a contested case and is subject to review under ORS 183.484. If the enforcement agency conducting a hearing under this section is not a state agency, judicial review of the order is as provided in ORS 34.010 to 34.100.

### **Section 8 (replaces part of 830.909): Liability for costs of salvage, towing, and storage**

The new language is in the same spirit as the current statutes, but the new language further clarifies that any order imposing liability for those costs is subject to judicial review as provided in section 7 (11) of this 2013 Act. This statement will support efforts to do cost recovery from owners of abandoned and derelict vessels. Currently, action on abandoned vessels is delayed until it is determined the owner does not have the means to undertake the removal. With a solid cost-recovery process in place, vessels may be removed as soon as the seizure notice expires and then attempts to recover costs can ensue.

**Section 9 (replaces 830.927 and part of 98.245): Reclamation of seized vessels**

The new language eliminates reference to the 60-day custody period and instead states that title to the vessel will vest with the enforcement agency if all costs are not paid by the date specified in the post-seizure notice. The owner of the vessel must also establish, to the satisfaction of the enforcement agency, that the owner is able to move the vessel to a place where it can be lawfully kept before the vessel will be returned.

**Section 10 (new section): Liability of enforcement agency**

Currently, removing authorities (law enforcement agencies and ports) are hesitant to take custody of abandoned or derelict vessels because they do not have clear civil liability protection when investigating, securing, salvaging, removing, storing, and disposing of them. This new language states that an enforcement agency (and anyone the agency contracts with for removal services) is not liable to an owner of an abandoned vessel or a derelict vessel for any damages resulting from the seizure of the vessel.

**Section 11 (new section): Use of contractor**

This new language makes it explicit that an enforcement agency may enter into a contract with any person to carry out the provisions of this series (for salvage, towing, storage, disposal, etc.). This is similar to the abandoned motor vehicle statutes 819.104(2)(b).

**Section 12 (replaces 830.909): Offenses**

The new language makes it much clearer when the offense occurs and should make this more enforceable. The current statute says that a person commits the offense of abandoning a vessel if he or she leaves the vessel on public or private property without permission. However, is unclear at what point the offense actually commences. This language will clarify retrieval intention and time periods.

The new language changes the offense to be the failure to remove an abandoned vessel after notification. The time at which this offense occurs is clear – if the owner fails to take action on the vessel within the times specified in the pre-seizure notice, the owner has committed an offense. The new language would also make it an offense to fail to remedy the derelict condition of a vessel on the waters of the state after notification.

Both offenses are listed as B misdemeanors, which is consistent with the existing offense “abandoning a boat, floating home, or boathouse.”

**Section 13 (amends 830.926): Salvaged Vessel subaccount**

The amendments in this section rename the “Abandoned Boat Removal and Cleanup Subaccount” as the “Salvaged Vessel Subaccount” and allow for use of the Salvaged Vessel subaccount as soon as a boat meets the definition of derelict or abandoned (instead of after unsuccessful attempts in collecting reimbursement from the owner). Again, this will allow a more proactive approach by quickly removing hazards from the water and then pursuing cost recovery from the owner. Second, the amendments authorize up to 90% reimbursement to enforcement agencies for the removal of abandoned and derelict recreational boats, floating homes, boathouses, and other floating structures, while leaving the cap at 75% reimbursement for abandoned and derelict commercial vessel. Finally, the amendments authorize use of the Salvaged Vessel subaccount for a Vessel Turn-in Program.

