

Received 2/28/24  
via email

NOTICE OF PROPOSED NEW REGULATIONS ON DERELICT VESSELS  
IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

BRIEF DESCRIPTION

The Department of Natural Resources proposes to adopt new regulations on the administration of the Derelict Vessel Prevention Program Fund and the department's related enforcement authorities.

The Department of Natural Resources proposes to adopt regulation changes in Title 11 of the Alaska Administrative Code, dealing with the administration of the Derelict Vessel Prevention Program Fund and the department's related enforcement authorities, including the following:

- (1) 11 AAC Chapter 61 is proposed to be added as follows:
  - Defines appropriate uses of the derelict vessel prevention program fund to include: reimbursement to a municipality or state agency for the removal of a derelict vessel from waters of the state or from state or municipal property; payment for the development and implementation of other derelict vessel prevention program goals; subsidization of projects directly related to the derelict vessel prevention program; payment for administering the fund.
  - Establishes annual percentages of money available for each use of the derelict vessel prevention program. Allows for the exceedance of these percentages, when money from the fund remains available, for situations where removal of a derelict vessel would prevent substantial harm or substantially improve ecological conditions.
  - Establishes the processes by which a state agency or municipality may apply for reimbursement, or a municipality may apply for a guarantee of reimbursement.
  - Establishes enforcement authority.
  - Establishes definitions.

The public may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Marcella Dent at 550 W. 7th Avenue, Suite 1070, Anchorage, AK 99501-3579. Additionally, the Department of Natural Resources will accept comments through SmartComment at <https://alaskadnr.commentinput.com?id=cfCQx2GVWM> or by electronic mail at [dnr.derelictvessels.regulation@alaska.gov](mailto:dnr.derelictvessels.regulation@alaska.gov). The comments must be received not later than **5:00 pm Alaska Daylight Time on Monday, April 1, 2024**.

The public may submit written questions relevant to the proposed action to the contact information provided above. The questions must be received at least 10 days before the end of the public comment period by **Friday, March 22, 2024**. The Department of Natural Resources will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and at <https://dnr.alaska.gov/mlw/news/>.

Persons with a disability who need a special accommodation in order to participate in this process

may contact Marcella Dent, [dnr.derelictvessels.regulation@alaska.gov](mailto:dnr.derelictvessels.regulation@alaska.gov) or 907-334-2683 not later than **Friday, March 22, 2024** to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Marcella Dent, [dnr.derelictvessels.regulation@alaska.gov](mailto:dnr.derelictvessels.regulation@alaska.gov) or 907-334-2683.

After the public comment period ends, the Department of Natural Resources will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. Anyone whose interests could be affected should comment during the time allowed.

**Statutory authority:** AS 30.30.090; AS 30.30.095; AS 30.30.096; AS 30.30.165; AS 30.30.010


**Statutes being implemented, interpreted, or made specific:** AS 30.30.090; AS 30.30.095; AS 30.30.096; AS 30.30.165; AS 30.30.010

**Fiscal information:** The proposed regulation changes are not expected to require an increased appropriation.

The Department of Natural Resources keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the department notices of proposed regulation changes. To be added to or removed from the list, send a request to the department at [dnr.derelictvessels.regulation@alaska.gov](mailto:dnr.derelictvessels.regulation@alaska.gov), giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

Individuals can also subscribe to receive automated notifications of all State of Alaska notices, including public notice for regulation changes, by subscribing to the Alaska Online Public Notices System: <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx>.

Date: February 28, 2024

  
\_\_\_\_\_  
Christy Colles, Director  
Alaska Department of Natural Resources  
Division of Mining, Land and Water

APPENDIX C-1: Additional Regulation Notice Information

ADDITIONAL REGULATION NOTICE INFORMATION  
(AS 44.62.190(d))

1. Adopting agency: Department of Natural Resources
2. General subject of regulation: Derelict vessel prevention program fund and related enforcement authority
3. Citation of regulation (may be grouped): 11 AAC 61.010-61.900
4. Department of Law file number, if any: 2023200268
5. Reason for the proposed action:
  - Compliance with federal law or action (identify): \_\_\_\_\_
  - Compliance with new or changed state statute
  - Compliance with federal or state court decision (identify): \_\_\_\_\_
  - Development of program standards
  - Other (identify): New chapter of regulations to interpret and make specific the Derelict Vessels Act, AS 30.30.
6. Appropriation/Allocation: 3002 Department of Natural Resources/Agency Unallocated
7. Estimated annual cost to comply with the proposed action to:
  - A private person: no cost
  - Another state agency: no cost
  - A municipality: no cost
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>2024</u>	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/ program	\$ <u>0</u>	\$ <u>0</u>

APPENDIX C-1: Additional Regulation Notice Information

Other (identify) \$ 0 \$ 0

9. The name of the contact person for the regulation:

Name: Aaron Timian  
Title: Natural Resource Manager 3  
Address: 550 W 7th Ave, Ste 1050a, Anchorage, AK 99501-3579  
Telephone: (907) 465-3513  
E-mail address: aaron.timian@alaska.gov

10. The origin of the proposed action:

Staff of state agency  
 Federal government  
 General public  
 Petition for regulation change  
 Other (identify): \_\_\_\_\_

11. Date: February 28, 2024

Prepared by: Marcella Dent  
[signature]

Name (printed): Marcella Dent

Title (printed): Natural Resources Specialist

Telephone: 907-334-2683

11 AAC is amended by adding a new chapter to read:

**Chapter 61. Derelict and Abandoned Vessels.**

**Article**

1. Derelict Vessel Prevention Program Fund (11 AAC 61.010 - 11 AAC 61.016)
2. Enforcement Authority (11 AAC 61.110 - 11 AAC 61.900)

**Article 1. Derelict Vessel Prevention Program Fund.**

**Section**

10. Derelict vessel prevention program fund
15. Reimbursements to municipalities
16. Reimbursements to state agencies

**11 AAC 61.010. Derelict vessel prevention program fund.** (a) The department may use the derelict vessel prevention program fund established under AS 30.30.096 to

(1) reimburse

(A) a municipality for a derelict vessel removal from waters of the state and from state or municipal property; or

(B) a state agency, including the department, for a derelict vessel removal from waters of the state and from state or municipal property;

(2) pay for the development and implementation of other derelict vessel prevention program goals;

(3) subsidize a project directly related to the derelict vessel prevention program; and

(4) pay the costs of administering the fund.

(b) The department will allocate an annual percentage of money available from the derelict vessel prevention program fund to uses set out in (a) of this section, as follows:

(1) the use set out under (a)(1)(A) of this section will be allocated up to 42.5 percent;

(2) the use set out under (a)(1)(B) of this section will be allocated up to 42.5 percent;

(3) for program development, program implementation, or a project subsidy as set out under (a)(2) and (3) of this section, up to 13 percent collectively; and

(4) for fund administration as set out under (a)(4) of this section, up to two percent.

(c) If money from the derelict vessel prevention program fund remains available to the department, the allocation percentages set out under (b) of the section may be exceeded if

(1) the removal of a derelict vessel would prevent substantial environmental or economic harm;

(2) the removal of a derelict vessel would substantially improve ecological or economic function; or

(3) any portion of the annual fiscal year funding available to the department remains unspent after December 31 of each year. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 30.30.090            AS 30.30.096            AS 30.30.165  
AS 30.30.095

**11 AAC 61.015. Reimbursements to municipalities.** (a) For reimbursements under 11 AAC 61.010(a)(1)(A),

(1) the department will run a 60-day solicitation on April 1 of each year to collect applications for reimbursement; the department will post information about the solicitation on the department's abandoned and derelict vessel program website, including the annual amount of funding available, the application packet for reimbursement, and the list of projects chosen for reimbursement; if funding remains after completion of the first solicitation period, the department will accept applications on a continuous basis until the allocated percentage listed in 11 AAC 61.010(b)(1) is reached;

(2) the department will accept an application seeking

(A) reimbursement for a derelict vessel removal that has been conducted;

or

(B) a guarantee of reimbursement for a derelict vessel removal that a municipality seeks to conduct;

(3) a municipality seeking reimbursement for a derelict vessel removal that has been completed must submit an application on a form provided by the department; the application must include

(A) any information known to the municipality that is responsive to the criteria listed in (b) of this section;

(B) all receipts directly tied to the removal of the vessel;

(C) the total amount the municipality is requesting for reimbursement;

(D) the date the vessel removal occurred; and

(E) other additional information the department determines is necessary to make a determination under (b) of this section;

(4) a municipality seeking a guarantee of reimbursement for a derelict vessel removal it seeks to conduct must submit an application on a form provided by the department; the application must include

(A) any information known to the municipality that is responsive to the criteria listed in (b) of this section;

(B) a formal estimate of the removal cost;

(C) the current ownership status of the vessel;

(D) the total amount the municipality is requesting for the reimbursement guarantee; and

(E) other additional information the department determines is necessary to make a determination under (b) of this section.

(b) In reaching a decision on an application, the department will consider

(1) whether the vessel is a derelict vessel within the meaning given in AS 30.30.090;

(2) whether the vessel is an important cultural resource;

(3) whether the vessel's removal may adversely affect cultural resources;

(4) whether reasonable efforts have been made to identify, locate, and hold accountable the party responsible for the vessel;

(5) the condition of the vessel and whether the vessel poses a risk of sinking or breaking up;

(6) whether the vessel poses an environmental hazard;



(7) whether the vessel poses a public safety threat; and

(8) whether the vessel may obstruct other productive uses of the area.

(c) Upon approving an application for reimbursement, the department may specify

(1) the total amount to be reimbursed; and

(2) the date by which the vessel removal must be completed.

(d) If the vessel removal is not complete on or before the date set by the department, the department may withhold the entire sum previously approved for reimbursement. (Eff.

\_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 30.30.090 AS 30.30.096 AS 30.30.165  
AS 30.30.095

**11 AAC 61.016. Reimbursements to state agencies.** (a) For reimbursements under 11 AAC 61.010(a)(1)(B), the department will accept on a continuous basis applications for reimbursement. The department will post information about the reimbursement process on the department's abandoned and derelict vessel program website, including the annual amount of funding available, the application packet for reimbursement, and the list of projects chosen for reimbursement.

(b) A state agency seeking reimbursement for a derelict vessel removal that has been completed must submit an application on a form provided by the department. The application must include

(1) all receipts directly tied to the removal of the vessel;

(2) the total amount the state agency is requesting for reimbursement;

(3) the date the vessel removal occurred; and

(4) other additional information the department determines is necessary to make a determination under (c) of this section.

(c) In reaching a decision on an application, the department will consider

- (1) whether the vessel was a derelict vessel within the meaning given in AS 30.30.090;
- (2) whether the vessel was an important cultural resource;
- (3) whether the vessel's removal adversely affected cultural resources;
- (4) whether the vessel removal was associated with a state or federally funded spill response;
- (5) whether reasonable efforts were made to identify, locate, and hold accountable the party responsible for the vessel;
- (6) whether the vessel posed an environmental hazard;
- (7) whether the vessel posed a public safety threat; and
- (8) whether the vessel obstructed other productive uses of the area.

(d) Upon approving an application for reimbursement, the department may specify the total amount to be reimbursed. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 30.30.090 AS 30.30.096 AS 30.30.165  
AS 30.30.095

## Article 2. Miscellaneous.

### Section

110. Enforcement authority

900. Definitions

**11 AAC 61.110. Enforcement authority.** (a) For the purpose of enforcing AS 30.30 and this chapter, a peace officer of the state, within the meaning given in AS 30.30.165, may

- (1) inspect a vessel believed to be abandoned or derelict;
- (2) post a written notice on the vessel as set out in AS 30.30.040(a) and (b);
- (3) post a notice of disposition on the vessel as set out in AS 30.30.045(a);
- (4) execute a warrant or other process issued by an officer or court of competent

jurisdiction as set out in AS 30.30.165(b)(1); or

(5) administer or take an oath, affirmation, or affidavit as set out in AS 30.30.165(b)(2).

(b) The authority granted by AS 30.30.010, 30.30.015, 30.30.055, 30.30.065(a), 30.30.165, and this section is permissive. Nothing in this section

- (1) requires an authorized public entity to exercise the authority; or
- (2) attaches liability to an authorized public entity that chooses not to exercise the

authority. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 30.30.010 AS 30.30.165

**11 AAC 61.900. Definitions.** In this chapter,

- (1) "abandoned" has the meaning given in AS 30.30.170;
- (2) "derelict vessel" means a vessel within the meaning given in AS 30.30.090;
- (3) "peace officer" has the meaning given in AS 30.30.165(a);
- (4) "removal" means the process of taking possession and disposing of a vessel;
- (5) "vessel" has the meaning given in AS 30.30.170. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_,

Register \_\_\_\_\_)

**Authority:** AS 30.30.090 AS 30.30.095 AS 30.30.096