

Ad-hoc Alaska Abandoned & Derelict Vessel Task Force Meeting Summary Final

Thursday, April 28, 2016

10 AM – 4 PM

Anchorage, AK

ACTION ITEMS are in **RED**, except throughout the 30.30 section. Many of the items listed there are action items in some way or another. They will be incorporated into the next draft of 30.30 you see.

A participant list is included at the end, including emails and phone.

Introductions and Overview

Participants went around the table to introduce themselves and their agency/roles. The group reviewed the agenda.

Updates and Action Items

The group went through updates and action items from the previous meeting (February 11, 2016).

Database. Jeff gave update from the ADNR GIS/IT folks that the database is pretty much ready to go live. There are different levels of access (master/top-level, display, review and submit levels). When data comes in, the idea is that it will be reviewed (probably by ADNR) then pushed up to display level. Agency staff can start using it if they have an ArcOnline account. **Jeff will work with Kyle to get an overview of instructions for Task Force members on how to access and use the database, and how to access the existing map.** Paper copy of VOC report form is still good. DNR will get it up on their website, others can post for increased access to the PDF.

Challenger Update. Rachel gave a quick update from a conversation with Kerry Walsh at Global Diving & Salvage. Disposal requirements were discussed, including the need to do a hazardous materials categorization and the expense of asbestos disposal for some vessels. Permitting for burning a vessel (air quality) or other disposal questions is done through ADEC on a case-by-case basis. Erika noted that with the Ocean Clipper they had applied for a permit to burn it and were denied by USFWS because of air quality and habitat concerns. The group had heard a total cost for the Challenger removal and disposal of \$1.7. There was some discussion of a recent case of two tugs in Adak (removed all the hazmat, and one sunk) just in the past two weeks. Military tugs then deeded to the tribe, no plan or \$\$\$. All of these case stories lead to the question of disposal, for which we don't yet have a good answer.

Concurrent Resolution 53. Jeff found a photocopy of this resolution from the 16th Legislature in 1990, requesting that the issue of Abandoned & Derelict Vessels be addressed. **Rachel will send out an electronic copy and include in the next ADV newsletter.**

Habitat restoration ideas for EVOS funds. Erika asked the group if there were any ideas for a proposal that would address habitat concerns and ADV in the EVOS spill area, or the start of an ADV Fund, attached to the spill area? Possible legacy for EVOS funds. **Erika is submitting proposals over the next two months and will work with Rachel to further discuss ideas.**

DNR Action Items from the last meeting (Jusdi update):

- They had a meeting with AG's office on personal collections and cost-recovery. They didn't get much feedback as it's not generally done.
- Jusdi & Jeff were the only two folks that showed up for one-on-one meetings with Holly & Katie. There was some miscommunication, but they did get a draft of 30.30 for making suggestions. **Jeff and Jusdi have made suggestions throughout, and will send to Holly and to Rachel.**
- ADNR has proceeded with public notice changes and can now do public notice online for 30 days.
- Regulations contractor. He's an ex-trooper and has worked in SE - familiar with the ADV problem. He's looking at the revisions via Enforcement & Penalties, but haven't heard back from him.
- SnoTrac program has registration fees that goes back to State Parks that are given out in grants. 75% of boat registration fees goes to Boating Safety Kids Don't Float. \$24/three-years. Rachel asked how much that pot of money is, and if it's a useful amount could the arguably small three-year fee be slightly raised? It hasn't been raised since 2001. Erika noted that the invasive species people are looking at that fund.
- If you don't register your boat, it's a \$50 fine citable by the Troopers. Proof of ownership for the harbor = state registration with AK numbers. When vessels are getting passed down, there is no process for transfer of registration with the state. In Bethel, state patrols once or twice a year and gives fines.
- Steamboat Slough Update. Turned over the majority to the DOL officially and being run up the chain for prosecution for the two main players. FWC has not contacted DNR, but Dave Ausdahl came in and filled out permit applications for barges in the area. Concerned about the turn-over to DOL. First time they've connected with Ausdahl at all. Will there be any feedback on his permit applications for current barges, given the abandoned ones? The permits will probably look about the same as other permits for his current vessels. Although it's not typical for someone to get authorization while in violation, it seems like a good plan to at least have bonding and insurance for future compliance. How long are the permits good for? The longest is 5 years and it is revocable at will. Feedback can be taken and added as stipulations on the permits, and as they move forward DNR staff will look for getting feedback with the owners. **There will be a 14 day public notice period; DNR will send out to the Task Force for any feedback. Jeff can provide assistance if there are questions on how to provide good/useful comments.** Peter noted that the ice went out on Tuesday and starting this weekend the boating will really pick-up. He also noted that this year will probably be very low water year and would be a good time to look at the barge near Kwethluk. **Folks were asked to please take any photos when they are in the field.** Peter can head out in the skiff and check it out any time. Alissa brought up the loose barge in Steamboat Slough. Now secured.

- Bill that went through House & Senate that changes definition of navigable water. Needs to be signed by the Gov. Jusdi gave a copy to Katie (BHBC). **Jusdi/Holly get a copy to Rachel. Holly will change the definition in 30.30 to be in line with these revisions as necessary.**

- Rachel asked if ADEC had reviewed the sections of 30.30 dealing with hearings and providing notice. **Not yet, but Jade will look into it.**

- Still waiting on USCG updates from the last meeting.

- Rachel Clean Pacific/nationwide update. Rachel is going to Seattle in June to present on ADV at the Clean Pacific Conference. Global Diving & Salvage is hosting the session.

- BHBC update on the federal lien process & cost recovery. Background materials were include in the meeting packet. Katie gave a verbal overview. Different process than what we do in state court, but may be worth knowing about if there is value to the vessel.

- Alissa, Brownsfield folks on the river wondering if they could get together and cost-share for shipping of scrap metal from the Kuskokwim. The group gave positive feedback for the idea, but noted that the current price for steel is super low.

- Mike hadn't seen any problems with multi-agency authority under statute to write regulations, but didn't think there were many examples. Jusdi had run the question by the AG at DNR but hadn't yet heard back. To promulgate regulations, it's not unheard of to allow for multiple agencies to work under statutes and regulations. There is another process that goes through the governor's office to promulgate regulations (administrative order 266 under Parnell).

- Commendation letter for Wyn. **Rachel will connect with Jade & Steve to get this done.**

Titles and trailers & vessels/documentated and registration. Rachel presented the document she put together comparing the title requirements, registration, and transfer of ownership processes for boat trailers, USCG documented vessels and other vessels. The question was raised: Why don't we title and can we? **Rachel will wrap around to the DMV to learn more on vessel tracking, registration and the title process/background.**

The group discussed where vessel owners are charged money for their vessels. The Kenai Peninsula Borough assesses property tax against vessels. Peter thinks Lakes & Pen Borough or City Dillingham/Naknek charges. Peter noted that we're just trying to trace the boats. It would be very useful if the state would come up with a mechanism for transfer of ownership. Maybe doesn't have to be titled, but improve record keeping? AK number would probably be good enough if it was better tracked and there was more onus on the boat owner to change registration when a vessel changed hands.

BREAK

ADV State Statute (30.30) Revisions

Rachel presented the Problems & Solutions document she drafted. This document is an effort to assess what progress we have made and what we have left to do before having a revised statute to hand off to interested legislators in Juneau in the fall.

Problem: Determining ownership.

- Reviewed current 30.30 revision with definition (30.30.190 (3)). Some comments from ADNR as far as language (moorage vs agreement is too specific - "authorization" or other general term). **Holly/Katie will change this language to make more broad.**
- How can we work towards compelling registration transfer of ownership. Rachel will connect with DMV folks to better understand this question.
- AK numbers don't really mean much right now. The troopers are not fining and the penalty is only \$50. So not a high priority. Before requiring titles, possibly look at enforcing and engaging the registration process before adding another process. The bail schedule maybe fits the crime, but it's only enforceable by the troopers and it's not very helpful. The choke points are a good place to do enforcement .
- Change to Division of Motor Vehicles under the Dept of Administration.
- If a vessel is supposed to be USCG documented but isn't, if the vessel is boarded/inspected the business can be immediately shut-down.
- Think about barges, as they aren't required to be documented or registered. How can ownership and transfer of ownership be determined? Can barges be added to state registration requirements?

Problem: Enforcement

- Alyeska Resort and Knik River Public Use Area DNR can issue tickets through a bail schedule. Nothing similar is available for enforcement of trespass on general state land – all violations have to go through the Dept of Law.
 - Need to add independent sections on Enforcement, Penalties, Regs and Fees. Need to be clear and upfront – the public often provides a lot of pushback on DNR getting enforcement authority.
 - Next step is to draft these sections. Jusdi asked to wait a few weeks for feedback from someone on the enforcement authority.
- Poster child would be the Knik River PUA. Knik vs Sutton. The funding came in for Knik and they were able to pass regulations for Knik. DNR Peace Officer can go out and issue tickets - doesn't have to go through the Troopers etc. There are a lot of permits out there that no one even gets. For DNR to enforce, they have to go through the troopers and go through the brown shirts of which there are very few. Wrap in Dept Public Safety to get support for things that are bailable citations (non criminal) that DNR could do directly. Could be fought in Alaska court system but wouldn't have to go through DOL etc. Right now they have to take people to court to do any fines.

Great Analogy:

If a car is illegally parked, instead of getting a ticket, the enforcing agency can only post a notice. Then wait thirty days, then send another notice, then go to DOL and ask for them to

take the owner to court to get any fines. Long, expensive and ineffective process for compliance.

Encumbrance of state lands is also an issue. This is happening with vessel(s?) right now on Lake Iliamna. DNR is going through the impoundment process and Lake Pen Borough is able/willing to get rid of it, however there is no money to do so.

Costs spent to date on ADV. DNR already reports to the legislature on # of shipwrecks (reported vs resolved). **Jusdi can get that information to Rachel.**

Bryan noted that the age of the fleet is increasing. We're looking uphill at an aging fleet and the problem isn't going to improve.

Problem: Vessel transfer

- Need to improve the paper trail for vessel ownership and transfer
- Insurance changes in Title 5. Why \$300k? \$1million may be more reasonable. **Change wording to be less specific: "a marine insurance policy that is appropriate for the vessel that covers disposal and salvage, pollution."**
- If a vessel is unrecoverable, can the state get a flat amount? The state must be listed as additionally insured (in regulation in DNR for commercial liability insurance). P&I insurance does cover wrecks. Make sure that the state can benefit from the proceeds if there's an incident. "This policy must provide for the removal and proper disposal of the vessel in the event of a wreck."

In the event that the vessel is unrecoverable, include a penalty with money that would go into the Derelict Vessel Fund. Most insurance companies would be glad to pay that vs going to actually get the vessel. Make sure the amount of the fee is high enough to compare the cost against recovering a vessel (this could be a problem). "Unrecoverable" can be for safety and/or cost. Somebody has to be a determining agency for what is or isn't recoverable. Currently, anything in over 100' of water realistically is not going to be recovered. Establish a fee for leaving a vessel in the water. WA small spills fee, as a whole same as in Alaska there's no penalty for spills. Getting something gets a win.

There is some cap/ceiling to taking insurance money and putting into a fund. (Bob/Erika)

Rachel - a lot of rec boaters are insured, as are much of the commercial fleet. Jade noted that a lot of times they don't have pollution/salvage insurance. And often the "bad actors" won't get insurance even if it's required.

LUNCH

Following lunch the conversation about Insurance & Fees/Raising Funds continued:

Rachel brought up some concerns re: will the insurance help solve problems, how big of a sticky point will this be policy-wise. Is it worth picking this battle? Probably worth giving it a try and then see what happens from there.

Questions were raised about the motor fuel tax - fuel sold for marine use now taxed at \$0.10/gal (doubled). Funds SPAR. This doubling just happened – any increases here are off the table. Was there an increase in the commercial fisheries business tax (3% ex-vessel increase)?

On the insurance requirement front, the length requirement was discussed. 35' length ~ Bristol Bay Gillnetters are 32'

What about adding on a new fee for boat ownership? This could be further discussed with DMV.

Problem: Fund – there needs to be some pot of money established for dealing with ADV.

One concern is that if there is public perception that there is money out there to deal with problems, maybe people will just walk away from their vessels. Arguably that is happening now anyways. Outreach needs to be an ongoing component of ADV management and prevention

Would need to have an accessible fund (there has been some ground work done by Clark Cox & understanding of how to create a fund and establishing a fee that would go into a specific/dedicated fund vs the general fund).

Draft language that establishes a fund as part of the 30.30 revision.

Problem: Seaton's provision - no enforcement & unrealistic as when you remove all of the hazardous substances you'd leave the vessel not moving.

Check on the legality of this provision in 30.30 as it stands now. Enforceable only if it's a totally non-functional vessel. Bailable citations need to be super black and white. Is it a pollution threat is not a question easily answered by DNR.

Problem: Heaps of bureaucracy/agencies are slow to act

The legislature and the public need to keep in mind agency's needing to be able to Act Fast. Need to be able to move when the opportunity strikes for dramatically reducing costs, pollution prevention and effectiveness of response when a vessel becomes a threat. A fund is great, but timing is just as important as the money. The Adak case again is a perfect one of how the state needs to be able to piggy back on the Response Fund (both state & federal) and save the state a lot of money. This is a CRITICAL SELLING POINT for getting funding – we're already spending a lot of money and staff time on these issues. Through these efforts we will consolidate, streamline and reduce overall spending.

Problem: Old vessels getting passed down/hot potato

Rachel asked how the Task Force felt on the question of secondary liability.

Jeanette - rural communities with no marine surveyor will be challenged and possibly they're just not going to do it. Peter: a lot can be done online now. Getting insurance is always going to require a marine inspection.

Would it be enforced? Probably not, but could give another avenue to go after people.

We will draft language to include mirrored from WA state statute.

Problem: Dry/non-fuel barges aren't tracked in Alaska.

Need to add dry/(non-fuel) barges to the requirement of registration - or have some way to track these vessels in Alaska. ("Vessel" sometimes includes barges and sometimes doesn't). Problem on the river system. Safety issue.

1st - there needs to be some very clear way to transfer ownership at the state level.

*2nd - add requirements to that transfer for certain vessels
Make sure that includes fed & state*

How does WA do it if the buyer doesn't file all of the paperwork to take the paperwork over?

Problem: Disposal

-Voluntary Vessel Turn In Program (VTIP). Increasingly common in the rest of the country. A lot of requirements to participate, including removing all HAZMAT and is restricted to smaller vessels

- DNR having emergency access to a fund so they can remove a vessel before it's sunk. This could save a lot of money.

Having a list would be helpful - who does shipbreaking in the state? Ship breaking regulations are tight, so who is doing this? What are your options? Rachel suggests it would be a very good question to answer before we take statute revisions to Juneau. Doug noted that each community/municipality has unique disposal options and constraints. Given that, it would be good to include outreach to municipalities to come up with ideas of how to remove vessels. Jade - funds might not be enough to remove big vessels, but could be super valuable to fund a person to be doing outreach etc. Very valuable to answer these questions. Right now it's no one's job to do it. Establishing an ADV Program and a point person to deal with these issues, outreach and long-term planning for the state would be a HUGE step forward. It's important to note that although this would create a "new" position, the work is already being done by many people at DNR so it would be effectively combining time and money that is already being spent.

Rachel - does adding a VTIP into statute feel like a good idea in this effort? Holly - would this be better in DMV? Peter - can this include language to allow for local efforts to chop up boats in rural communities and get funded through the DV Fund?

If the vessel has no value, you're not going to get any money, etc. we end up having to deal with it anyway.

Jade - could this be tied to secondary liability somehow? Need to do that so that the guy with a dream and has no resources (that won't turn them in) doesn't end up with the vessels.

Jusdi - Ok to keep in, but this would be costly to administer and not a priority. They will continue to be reactive and not pro-active for a long time. The top level at DNR might take this out, but sure keep it in for now.

Holly - really need to bring DMV into this conversation. They are used to user-friendly programs that are marketed to the public and they may be a better fit for this.

We will draft language that allows for the establishment of a VTIP program in the future if that seems to be a good fit.

BREAK.

Problem: The notice process is outdated and cumbersome/not effective

Solution: Move to what DNR is doing for just doing online posting. Mirror that in statute to take advantage of technology for both notice and publication. Check on "publication" provisions. DNR modified 38.05.945 to add 'or'. It's been challenged and hasn't been turned over by the Commissioner. Still need to post a notice on the vessel is a federal law that has to be followed.

ADV Newsletter #3

Rachel reviewed the content suggestions from the spring. Still sounds good and she will go ahead with a draft. Add the change of definition of navigable water, and the legislative resolution from 1990.

NEXT STEPS

What is the process and how do we share this moving forward?

Mike is a good resource, he navigated HB131 through Juneau. Need to have a "song and dance" that explains the background etc. Senator Hoffman's fish camp is just around the corner of Steamboat Slough.

Draft 30.30 still needs to go to the AGs office of the agencies and get vetted (any agency is being named must be vetted).

When do we plan to have the draft finalized to move to the AGs hands. DNR is pretty cooperative/responsive and has been involved in the issues at hand.

DEC and ADF&G would support, but would be carried by ADNR. Commissioners and AGs are talking and working together so there is communication there.

Proposed Timeline:

May 20: Get feedback from DNR on enforcement before “finalizing” a draft 30.30 and DMV for changes to Title 5

June 24: Get a revised 30.30 and Title 5 to task force to take to the AGs offices/supervisors/individually review for feedback, along with a summary document of Problems & Solutions that gives a broad overview of the actions discussed by the Task Force

August 31: Get revisions back to Holly/Rachel from all departments and Task Force members, including Fiscal Notes from ADNR and ADEC (???)

September 30: Final draft of statute out to all Task Force members for final review.

October 15: Statute revisions available to be picked up by legislative sponsors to pre-file and take to Juneau

Please look at this closely and provide any feedback on timelines, what the Departments need to do before we move forward to a legislator, and what we need to have prepared for Juneau

Alaska Ad-hoc Abandoned & Derelict Vessel Task Force

April 28, 2016 Anchorage Meeting

Participant List

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