

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

Thursday, February 11, 2016

10 AM – 4 PM

Anchorage, AK

ACTION ITEMS are in **RED**

Action Items from the meeting are summarized in the table below. PLEASE REVIEW.

WHO	WHAT
ALL TASK FORCE MEMBERS	<ul style="list-style-type: none">• Provide Rachel with any background information on Steamboat Slough• Please use, and work with your field staff to use, the VOC reporting forms and the Collector app whenever possible to populate the database.• 30.30.120 - 030.30.135: Especially state agency reps, review with internal current process and AGs• Watch your language and use the correct terms (RP VS Owner) in the correct situations.
AMY	<ul style="list-style-type: none">• Look into USACE regulations and any federal actions regarding ADV and provide the Task Force with any updates. DONE
HOLLY	<ul style="list-style-type: none">• Draft a 'step-by-step' for cost recovery (i.e. How to Get Your Money)• prepare a draft letter requesting a navigable designation for an ADV case from her work with the Sound Developer• Share the US Marshals office packet on how to go through the federal process for vessel impoundment• Review the regulations for enforcement and how to ensure that the statute maintains enforcement authority for all agencies.• Draft a memo after meeting with agency folks & reviewing regs to outline what it means to criminalize it, and add some options for how to move forward.• Under definition of Owner, add state registration address to this sentence that references USCG documentation• Compare federal and state definitions to ensure no conflict and that we consider potentially useful/well-vetted federal language
JUSDI	<ul style="list-style-type: none">• Work with Kyle (DNR IT) to confirm database records• Talk to AGs office to find out if they use collections/personal actions for cost recovery• Work with Holly on regulations, and get feedback from DNR regulations volunteer.• Look into what ADNR is proposing for changes to providing notice and

	<ul style="list-style-type: none"> will get it to Rachel to distribute to the Task Force Look into the SnoTrac program in DNR and report back to the Task Force.
MIKE	<ul style="list-style-type: none"> Was going to look into any policy concerns for enabling authority for single- vs multiple-agencies
PAUL	<ul style="list-style-type: none"> Check with the NPFC to understand where/when their cost recovery process ends/when they stop going after RPs Look into the funding process for USACE when it comes to derelict vessel removal and report back to the group
RACHEL	<ul style="list-style-type: none"> Update the VOC reporting form to match the new database fields DONE AND UPDATED ON WEBSITE Post the USACE document from 1995 on navigable waters (work with Holly & Amy to find?) Add the national NOAA ADV website to our Alaska ADV page DONE Find communications from west coast governors to the federal delegation. POSTED TO WEBSITE Work with Holly for more information on the CFR and federal impoundment requirements, and connect with Amy for more information on status of any federal actions regarding this process. Research and provide the Task Force with information on other states' Vessel Turn In Programs (VTIPs) Connect with DMV and learn more about titling: why there aren't more strict requirements on type of title and requirements for bill of sale, etc. & share back to the Task Force. Provide a memo for the Task Force that outlines the difference between documented & registered vessels. Work with Steve to finalize commendation letter for Wyn and provide draft for Task Force to review Draft newsletter language for the Task Force to review Send out a scheduling poll for our next meeting in April
STEVE	<ul style="list-style-type: none"> Work with Rachel to finalize a draft commendation letter for Wyn
TODD	<ul style="list-style-type: none"> Provide the Task Force with the relevant definitions from the CFR DONE

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

Rachel reviewed action items from the previous meeting (October 27, 2015) and asked for updates on each.

Steamboat Slough. Lt. Chung (USCG) went to Bethel last week. COPT order to Walsh & Ausdale to mark the Schenk's Ark and he confirmed that they have complied with that order (FWC complied, no word from Ausdahl). Jeff (ADNR) was in Bethel last Thursday to look at some of the newer barges placed there this winter looking for permits. The light was on the vessel but it wasn't working. He has photos to share with USCG. The light is solar, so it might not work right in the morning. Jeff will ask the trooper to check it out at night to check in. DNR has

sent a final letter before the AGs office takes over -they have 30 days to respond. Alissa (ONC) provided an update that there are more barges there from this fall. Around Schenk's Ark community members placed cut trees to prevent people from running into it over the winter. ONC will be conducting another aerial survey soon to see what's sticking out. There have been no NRC (pollution) reports since the last ADV meeting.

Rachel is still looking for information from various stakeholders to compile into a draft overview that could be utilized for future funding opportunities.

DNR Database. Frank & Kyle from ADNR IT gave an update. The database is up and on the DNR server. A potential issue: at some point the photos on the database might be a problem for taking up too much space, may need to be downsized or moved out to another place. Collector (ArcOnline app) is the current method for offline data collection with a mobile device, however to use Collector you have to have an ArcOnline account. If you are online with either wireless or on a desktop computer, you can collect the data regardless. A non-ESRI (ArcOnline) solution would be to pay a programmer to build a program. ADNR, ADEC, ADF&G all have ArcOnline accounts. USCG works hand-in-hand with DEC. It's important that the agencies have mobile access, harbor masters have access to desktops, and the public isn't as important at this point - need field collection to happen. Kyle looked at the NOAA shipwreck database to compare and reported that the VOC form is more robust than the NOAA database. Merging the data would add about 500 records - would be good if they are merged to be marked as coming from NOAA.

RACHEL - Change "tidally dependent" to "partially submerged" on the VOC form & upload the revised version to the ADV website.

Next steps: a lot of NULL fields from empty fields on the VOC forms (**JUSDI – Work with Kyle to make sure these are correct**), verification - how to do that for the status of the vessels? Who decides that? USCG - very appreciated effort. Utilized through ADEC.

ALL TASK FORCE MEMBERS – Please use, and work with your field staff to use, the VOC reporting forms and the Collector app whenever possible to populate the database.

Challenger. USCG Commander Patrick Hilbert Sector Juneau provided an update on the USCG involvement with the removal and destruction of the M/V Challenger. Challenger is a 96' WWII wooden hull tug in poor condition from lack of maintenance. Owner didn't take appropriate action following its sinking. FOSC federalized, after 3 weeks and unsuccessful dive attempts, utilized FWPCA and CERCLA authority to remove and destroy a vessel that is discharging oil into waterways. Sector Juneau put together a package for approval by the Commandant in D.C. That process was initiated in October, and included clarifying that the vessel had actually been "abandoned", make sure there are no other interested parties in the vessel, reaching out to stakeholders including SHPO, EPA, USACE, etc. to document due process. Jan. 22nd the Commandant approved the removal & destruction. This situation is unique because of the nature of the construction of the vessel, they are unable to remove the oil products on board and located in environmentally sensitive areas identified in the Unified Plan (DiPac & Mendenhall estuary) – thus the sustained substantial threat if it's not removed & destroyed. FOSC received multiple bids for removal & destruction - Global received the bid. UC established. Installing slings, next week a heavy-lift vessel, de-water, then tow to port of Juneau, then assessment and then destruction in Juneau.

Questions from the group: *Describe USACE involvement?* They were helpful, but determined vessel not in a federally navigable channel so they didn't have any stake. They approved the destruction activities covered under a general federal permit to utilize the beachfront on city lands in the Juneau-area. *Where did the multiple bids come from?* Three total that submitted plans for evaluation, Global Diving & Salvage was chosen. *How are*

they planning to dispose of the vessel? Still finalizing the plan, the vessel will be moved south of Juneau, above tidelands. It will be cut up, non-hazardous materials will be taken to the CBJ landfill. A heavy lift crane will be utilized which was already in Hoonah. Subcontracting that mobilization was part of the Global bid. *What about the owner? Will the pollution fund go after him?* Yes - the pollution fund will be pursuing cost recovery from the owner. *Is there any other action against him for abandoning the vessel?* They are waiting for the salvage & removal process to end, but potential civil process to bring pollution again. *If the owner has nothing for cost recovery, where does the end and the civil penalty pick up?* That's up to the pollution fund center and legal folks to sort out. DNR staff noted they recently had something similar, but cost recovery doesn't work because many owners in these situations don't have any money. The federal NPFC is pretty good at finding what assets a person has and going after them when appropriate. **PAUL - will check back with NPFC to find out what the process looks like and where they stop going after RPs.** Cmdr. Hilbert provided his contact information and the Task Force thanked him for his update.

The Task Force then continued to discuss cost recovery at the municipal and state level. Holly noted that the municipalities work with USCG , but in general they are very aggressive on collection on their end. Many municipalities have a collection firm that they work with. Personal action - can go after the owners on every front, and for municipalities it's usually for non-pollution-related costs, as those are dealt with by the USCG. **JUSDI - will talk to AGs office to find out if they use collections/personal actions.** USCG noted that agencies can access the pollution fund through the Unified Command and requesting through the SOSC when there have been pollution-related damages. **HOLLY will draft a 'step-by-step how to get your money' with help from Bryan & Todd.**

JUSDI working on the case study for the current situation.

The Task Force then continued with discussions regarding the US Army Corps and their funding sources for dealing with ADV. If USACE was involved for navigable waterway, they have a different funding stream from the pollution fund. Their funding process generally works completely differently (project-based) – **PAUL will seek more information on the funding process for USACE when it comes to derelict vessel removal and report back to the group.** Steamboat Slough, for example, is not deemed as a federally navigable waterway under the federal regulations – this takes USACE them out of the game. Difference between a "navigable" waterway and a "managed" waterway is also important. USACE has not been involved in any ADV cases in the state that anyone was aware of. Andy noted that with Sound Developer, it was super close, and had it been 100' in another direction would have been removed by USACE, but just on the edge and had to be dealt with by the City of Cordova. Holly has a letter worded with help from USACE that requested deemed as navigable, **HOLLY will prepare a draft letter requesting a navigable designation for an ADV case from her work with the Sound Developer,** knowing that wording is a moving target.

Updates from D.C.

AMY from Senator Murkowski's office will look into USACE regulations and any federal actions with ADV and provide the Task Force with any updates.

Holly noted that it would be helpful to have a map of what's considered a navigable waterbody by the USACE. Amy said they would likely reference a 1995 document that listed what areas they had defined, so that would be a good starting place. **RACHEL will work with Holly and possibly Amy to find this document and include it on the ADV website.**

Amy had to leave, but asked the Task Force to send along any questions that the Senator's office may be able to help with, as Sen. Murkowski is very involved in this issue. The Task Force thanked Amy and the Senator for their engagement and assistance.

ADV State Statute (30.30) Revisions

Please sign up for a meeting with Holly to get some one-on-one time to refine and discuss feedback.

Holly provided an introductory overview for this effort. Holly is looking for the original documentation of the conversations, etc. from the 1975 enacting of this statute – if it exists it's on microfiche and she's working on finding it.

Article 3. In the current draft we did take out Article 3, which addresses ADV on private property (repair businesses). There is already a process for private property takings, etc. Private businesses don't have as much due process requirement as fed/state/local governments. Rachel talked with the Homer Boat Yard and Northern Enterprises in Homer, neither of which were aware of Article 3 and have processes in place for dealing with vessels abandoned on their properties.

30.30.135 - Form of disposition. subsection B - where do the proceeds go? Doesn't really matter at this point because no one actually ends up with proceeds generally, but maybe should go to a Derelict Vessel Fund? This is a fairly big & complicated section of maritime law that you can't keep the money. Changes proposed in this draft would allow the impounding body to hold the funds for a year, and then go to that body if they haven't been collected. Note that the transfer of ownership of a vessel is subject to federal liens, regardless of ownership. The liens still exist while the boat exists. When you auction a vessel, you're executing your lien and you can't keep all of the proceeds for cost recovery. No municipality goes through the federal process because the vessels aren't usually worth enough to warrant the associated costs. There has been some case precedent to allow some more costs recovered - impoundment fees, cost of transporting and cost of auction/notices. You can't get additional funds generated.

HOLLY – Share the US Marshals office packet on how to go through the federal process for vessel impoundment

An ADV Fund could be useful for helping pay for this federal process. Cost of the federal lien process is so high, it might be worth looking at the federal law – it was likely not the intention the prevent ADV removal because of high costs. Todd noted that other states have processes (FL) that work through the US Marshals. Steve - the removal costs are usually small in other states, so the numbers can work out more reasonably outside. **RACHEL will ask Melissa Ferris (WA ADV Program) and possibly others for their experience with the federal impoundment process.**

RACHEL – Will add the NOAA ADV website to our Alaska ADV page, and will find communications from west coast governors to the federal delegation. Will talk with Holly for more information and connect with Amy for more information on status of any federal actions regarding this process.

Revised definition of derelict vessel & enforcement. Holly asked Task Force members to look at this definition and ask if there's a vessel here that wouldn't be covered by this definition. Enforcement and violations are not included here at this time. Enforcement authority in DNR is in both statute and regulation. **HOLLY – Review the regulations for enforcement and how to ensure that the statute maintains enforcement authority for all agencies. JUSDI – will work with Holly, and get feedback from DNR regulations volunteer. MIKE – was going to look into enabling authority for single- vs multiple-agencies.** Steve - with old 30.30 had DOT, but post-131 the

authority went to any state or municipal entity. DNR enforcement authority isn't shared with ADF&G necessarily, but troopers can write whatever tickets from each regulation. Holly noted that by default all statutes will be assumed to be in concert with all other statutes.

30.30.010 (2)(e) criminalizes derelict vessels. This is a placeholder for now. **TASK: Holly will draft a memo after meeting with agency folks & reviewing regs to outline what it means to criminalize it, and add some options for how to move forward.** Jeanette - a turn in program would be a great carrot to go along with this stick. **RACHEL – will look into other states' vessel turn in programs to understand their scope.** Even if a Vessel Turn In Program isn't feasible at this time, having the enabling language may be useful.

Doug - personally involved in trying to get the owner of the Challenger to get it out of the water. There was no incentive for him to come and meet and **a daily increasing fee would be helpful.** Alissa noted it's the same for Steamboat Slough. Jusdi - enforcement on steamboat slough is DNR & Dept of Public Safety. **What do you do if people have no money? Jail is/should be an option as well.**

Todd - when a case is federalized, the Federal Fund is enacted. Sometimes get money, and if they do they probably bleed that rock dry and nothing left for state/local. But that's only for the pollution.

30.30.020. Holly would remove this section from statute, and allow that fluidity in regulation. She heard there was interest to keep it, so she did add some language to qualify requiring ADNR approval within 30 days.

Lunch 12:45-1:45

Holly provided some highlights from the current draft of 30.30 and some talking points for the group to discuss for the afternoon.

- **Notice & Impoundment & Hearing processes.** What is and is not required. When we take someone's vessel, it triggers a heightened due process requirement through admiralty and state law. This is really important and needs to be compliant with the law under statute.

NOTICE. 30.30.060 (pg 3) Holly changed to 30 days. What works/makes sense to the different impounding authorities for providing notice? There is a shift away from newspapers, radio, etc. to more email, social media, internet. Post offices don't work - many don't even allow for postings. A lot of communities don't have papers of general circulation, and if they do it's not a regular publication (i.e. biweekly too long for a turn around with 30 day notice). What proper notice would be easiest and would this work? More than one place, some place that is accessible (not password protected) and something that is still there if the internet goes down.

30.30.120 Pre-impoundment hearing & 30.30.125 Impoundment of derelict vessels posing imminent and clear and present danger. Holly looked back and there is case precedent that says "days if not hours" required for a post-impoundment hearing. You cannot have the person doing the impounding do the hearing. How does this jive for the agencies with the Administrative process?

30.30.130 & 135. All of this is federally required, and is protective of lienholders. **State Agency Representatives – check this language with your AGs office.**

NOTE that ADNR is currently in discussion with AGs office on trespass hearings in general. The question - what are all of the sections in the agency doing to be consistent? Consider that advertising is expensive.

There's a current statute that may prohibit DNR from posting notice on their website - 38.05.945 (disposal statute, referred to for everything for disposal). Maybe add "the official public notice web page for the impounding agency or body". Then the notice on the vessel - those are the two methods of notice. JUSDI will look into what ADNR is proposing for notice and to get rid of the certified mail, etc. and will get it to Rachel. Mike asked what's wrong with using the online public notice section? Currently in statute it's not enough. Any time the state takes action, it's noticed through OPN but it's not in the DNR statute and it's currently now just by policy but not by statute. Trying to move away from requiring certified mail - a lot of folks don't pick it up and then you're stuck in a bad loop.

- **Look at the revised definitions of 'owner' and 'navigable waters' (page 7). Will they work in reality?**
Removed 'registered' from owner. Trying to make 30.30 more useable with a better definition of 'owner'.

"on record with the USCG". What's the better way to write that? If documented with USCG, you can send notice to the person on record with USCG. HOLLY - add state registration address to this sentence.

Footnote on page 7 - does Alaska Lands Act definition look comprehensive enough to cover? Look at federal definition of state waters to see if that should be referenced?

Todd noted there are federal definitions for 'owner' and 'responsible party' when it comes to pollution. TODD will provide the CFR definitions for comparison. Something to understand to make sure there's no conflict between state and federal definitions. HOLLY – Compare federal and state definitions to ensure no conflict and that we consider potentially useful/well-vetted federal language, but okay if they're different than ours so long as they don't conflict. Holly - it's cleaner to define the owner and go after them for the state. USCG goes after the responsible party – there are two different definitions. We often use the two terms interchangeably and that is confusing. For impoundment, we're looking to take someone's boat. So we're looking for the owner. USCG is going after conduct, and so they're more interested in the RP. The lienholders have to have due process as well - anyone with a stake in the vessel. EVERYONE: Watch your language and use the correct terms (RP VS Owner) in the correct situations.

JUSDI would like to run by the guy who helps write the enforcement regulations for DNR for feedback - trooper perspective.

Todd- the definitions used by CFR is from cases (including supreme court) that has pushed the definitions into what they are.

Navigable waters- this is being batted around with state and feds. Division in DNR dealing with navigable waters, ask them? Must be at least as strict as federal definition - Todd doesn't think it meets that at this point. We want the definition to be as inclusive as possible. There are big fights between feds and state as to whose waters are who's. We aren't going to be solving that problem. In the revisions, make the definition of navigable waters as broad as possible for now.

- **Title 5. Boating program, registering boats, titles.** Holly is looking for significant feedback here. What type of boat actually needs to be registered vs documented? Doug - what if it's not registered anywhere? Challenger was sold from one person to another with a personal note, but not registered with anyone. Includes language for person on the last known moorage agreement with muni or state agency. "Moorage agreement" might be too specific. DNR uses the term "user agreement" or "authorized by the department". An individual who has submitted authorization from a state agency or muni etc. It's important to make clear

that there's a hierarchy to not stick operators with ownership. i.e. look first to the USCG or state registration then go to signed agreements.

What if a vessel is stolen? Is there some precedent for that and how is it dealt with, etc.

WHY DON'T WE TITLE BOATS? Why is it harder to have a trailer than a boat? TITLING of vessels? RACHEL - Learn more about this, why there aren't more strict requirements on type of title and requirements for bill of sale, etc. & share back to the Task Force.

RACHEL: sketch out the difference between documented & registered vessels.

Bryan - vehicles, you tear off the bottom of the title and sell it - you do your part, but the other person doesn't always register. It's not a foolproof method to enforce transfer of ownership.

AK Registration numbers should be on the vessel – that is currently required. Should be enforced by the troopers, and is current law.

Mike - a lot goes back to federal law. Dept of Admin - recreational vessel vessels require registration but not title. DMV accepts different "titles" - affidavit of ownership, etc. Would it be useful to tighten up this title process?

- Requirements for a bill of sale? What about when partial payment is made?

- being able to do this online allows for remote folks to effectively transfer ownership/title.

Transfer of Ownership is what we're really looking at addressing in statute.

JUSDI TASK: Look into the SnoTrac program in DNR - snowmachine registration that goes back into the SnoTrac program – and report back to the Task Force.

- **Insurance.**

Any insurance requirement should probably be in title 5 vs in 30.30. Should add bodily injury/liability to fall more under Title 5? Doug: hesitant to put any hard number on insurance requirements (i.e. \$300k). Holly - insurance requirements can either just require coverage, or have actual dollar limits. This is one of the few numbers in statute. **Holly grabbed \$300k from WA statutes, but flexible on the numbers but recommends that there should be some number in statute.** A lot of municipalities are starting to require insurance - the state law should be reasonable enough that the munis don't feel the need to have their own that are more stringent.

35' is a placeholder, but length may not be the answer. What number works here? Can it be scaled? **Can be issued through regulation once a year, put out on a fee schedule. But who's fee schedule (DNR, DMV, etc)?**

Bryan would suggest lowering the length overall & need to define/describe as LOA etc etc etc. Consider 25-28' to capture the gillnetters.

Very controversial. Federal and state overreach etc etc. When talking about this, we need to make clear that taxpayers are currently shouldering the financial burden and it's unacceptable. It would be very helpful for Task Force members & members of the state/federal legislatures to be talking similarly about the derelict vessel issue.

Can't ignore this disposal question. What does a disposal site look like? LOOK AT VARIOUS QUESTIONS: tax breaks for salvors, what do disposal sites look like, etc. Good argument for an ADV person to start looking at

all of that. Andy - artificial reef program, looked at for the sound developer. didn't have the resources for pursuing the permitting, and the requirements are super stringent. Corps permit required to fill. Presentation to the AML attorneys encouraging artificial reefs. Navy was a huge proponent of it for a number of decades, but they've gotten away from it because of the requirements. Cheaper to go to scrap. DNR doesn't allow any scuttling on state lands. They do have a dive park, permitted by CBJ.

Wyn commendation letter

Task Force members were supportive of a letter of commendation for Wyn's participation and dedication to dealing with ADV around Alaska during his time at DMLW. Presenting: can present it here in the Anchorage office. Should come from Rachel on Alaska Clean Harbors letter head and signed on behalf of the Task Force members. **TASK: Rachel will work with Steve to finalize and provide to Task Force members for review.**

ADV Task Force Newsletter #3

Rachel shared the very draft ADV Newsletter, to be issued later this spring. She'll draft content and provide it to the Task Force for review before releasing.

Next Meeting

Next Meeting - sometime in April. last week of April 26-29 is spring preparedness conference. Perhaps that Monday coming in. Rachel will send out a doodle poll for scheduling.

Meeting adjourned at 4PM.

Alaska Ad-hoc Abandoned & Derelict Vessel Task Force Participant List

February 11, 2016

Anchorage Meeting

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