



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Natural Resources

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) **July 1, 2014** (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain: per RCW 79.100.150

Purpose:

Chapter 79.100.150 RCW specifies that DNR shall adopt rules that specify the minimum vessel inspection criteria required for a vessel owner to obtain prior to selling or transferring a vessel that is:

- More than 65 feet in length and more than forty years old; and
- Either: is registered or required to be registered under chapter 88.02 RCW; or is listed or required to be listed under chapter 84.40 RCW.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 332-08

Suspended:

Statutory authority for adoption: RCW 79.100.150

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-05-092 on 3/5/2014.

Describe any changes other than editing from proposed to adopted version:

Defined the term 'seaworthy' for the purpose of the rule, as related to the minimum criteria for a vessel inspection. 2SHB 2457, adopted 3/7/2014 referenced the term without providing a definition.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted: May 6, 2014

CODE REVISER USE ONLY

NAME (TYPE OR PRINT)

Megan Duffy

SIGNATURE

TITLE

Deputy Supervisor, Aquatics & Environmental Protection

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 07, 2014

TIME: 1:54 PM

WSR 14-11-003

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>3</u>	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>3</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 12-19-035, filed 9/12/12, effective 10/13/12)

WAC 332-08-101 Applicability to department actions under the Derelict and Abandoned Vessel Act, chapter 79.100 RCW. When is this chapter applicable to department actions relating to the Derelict and Abandoned Vessel Act? This chapter applies when the owner or lien holder of an abandoned or derelict vessel files a challenge to ((the)) a decision or action of ((a state agency)) the department acting as an authorized public entity ((is filed)) with the pollution control hearings board under the Derelict and Abandoned Vessel Act as provided in RCW 79.100.120 ((+2)(a)).

AMENDATORY SECTION (Amending WSR 12-19-035, filed 9/12/12, effective 10/13/12)

WAC 332-08-111 Derelict and abandoned vessel-Appeal deadline. When must ((my)) I file my appeal ((be filed))? The owner or lien holder of an abandoned or derelict vessel may file a notice of appeal regarding ((an agency)) a decision or action of the department under chapter 79.100 RCW ((may be filed)) with the pollution control hearings board ((upon receipt of the department's notice of intent to take custody of a vessel, but the notice of appeal must be filed no later than thirty days after the date the authorized public entity took custody of the vessel, or if the vessel was redeemed before the authorized public entity took custody, no later than thirty days after the date of redemption)). A written request for a hearing related to the decision or action must be filed with the pollution control hearings board and served on the department in accordance with RCW 43.21B.230 (2) and (3) within thirty days of the date the department acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the department acquires custody, no later than thirty days after the date of redemption.

AMENDATORY SECTION (Amending WSR 12-19-035, filed 9/12/12, effective 10/13/12)

WAC 332-08-121 Derelict and abandoned vessel-Filing location. Where must ((my)) I file my appeal ((be filed))? ((A)) The owner or lien holder of an abandoned or derelict vessel must file any notice of appeal concerning a decision to take temporary possession or custody of a vessel or the amount owed to ((an authorized public entity)) the department under chapter 79.100 RCW ((must be filed)) with the pollution control hearings board and ((served)) must serve a copy of the appeal on the department at the following addresses:

Pollution Control Hearings Board
Physical Address:
1111 Israel Road S.W., Suite 301
Tumwater, WA 98501

Mailing Address:
((P.O. Box)) MS 40903
Olympia, WA 98504-0903

Department of Natural Resources
Aquatic Resources Division
Derelict Vessel Removal Program
((P.O. Box 47027)) Physical Address:
1111 Washington St. S.E.
Olympia, WA ((98504-7027)) 98501
Mailing Address:
MS 47027
Olympia, WA 98504-7027

NEW SECTION

WAC 332-08-122 Transfer of certain vessels—Vessel inspection required—Secondary liability. When is this chapter applicable to the department's derelict vessel removal actions? As directed by RCW 79.100.150, a seller/transferor of a qualifying vessel must provide vessel inspection disclosure documentation specified in WAC 332-30-123 to the department before transferring ownership of a vessel that is:

- (1) More than sixty-five feet in length and more than forty years old; and
- (2) Either:
 - (a) Is registered or required to be registered under chapter 88.02 RCW; or
 - (b) Is listed or required to be registered under chapter 94.40 RCW.

After July 1, 2014, this chapter applies when the department seeks financial reimbursement from any person or entity the department determines has incurred secondary liability under RCW 79.100.150 for all reasonable and auditable costs associated with the removal and disposal of derelict or abandoned vessels. The department may pursue secondary liability if the prior owner(s) did not provide the department copies of a vessel inspection disclosure report, as specified in WAC 332-30-123, before transferring ownership of the vessel.

NEW SECTION

WAC 332-08-123 Minimum criteria for vessel inspection. (1) **What are the minimum criteria for a vessel inspection to determine a vessel is seaworthy?** For the purpose of this rule, the term "seaworthy" means the 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. Current U.S. Coast Guard certificates of inspection are acceptable forms of vessel condition determination. Other vessel inspection disclosure reports must document the condition, valuation, and suitability of the vessel for service. The vessel inspection disclosure report may be prepared for either the owner, lien holder, buyer/transferee,

vessel broker, or associated financial and insurance provider(s) for the vessel. Vessel inspections must be prepared by a professional marine surveyor who is a third party to the transaction. The vessel inspection must be completed within thirty days prior to the seller/transferor transferring ownership of the vessel. Before transferring ownership of the vessel, the seller/transferor must provide the department a hard copy of the vessel inspection disclosure report and department-issued Acknowledgement Form with original, notarized signatures of the seller/transferor and the buyer/transferee acknowledging receipt of the vessel inspection disclosure report.

(2) The vessel inspection disclosure report must include the following information, at a minimum if applicable to the vessel:

- (a) Cover page describing:
 - (i) Report title identifying type of survey;
 - (ii) Date report issued;
 - (iii) Contact information for surveyor;
 - (iv) Current photograph of vessel, date and location; and
 - (v) Official vessel number.
- (b) Vessel description:
 - (i) General description;
 - (ii) Vessel name;
 - (iii) Current legal owner;
 - (iv) Intended use of vessel;
 - (v) Design; and
 - (vi) Type of construction.
- (c) Vessel particulars:
 - (i) Builder;
 - (ii) Displacement;
 - (iii) Length;
 - (iv) Breadth;
 - (v) Draught; and
 - (vi) Fuel system.
- (d) Surveyor's notes and condition rating;
- (e) Systems evaluation:
 - (i) Type of propulsion;
 - (ii) Auxiliary engines; and
 - (iii) Electrical systems.
- (f) Conditions:
 - (i) Overall appearance; and
 - (ii) Hull and superstructure condition.
- (g) Surveyor recommendations;
- (h) Appraisal of market value;
- (i) Replacement value;
- (j) Physical suitability of the vessel and its equipment for its intended use; and
- (k) Determine whether the cost of repairs required to return the vessel and its equipment to physical suitability for its intended use is likely to exceed the market value of the vessel.

NEW SECTION

WAC 332-08-124 Procedure for vessel inspection documentation.

(1) **Where must I file my vessel inspection documentation?** The seller/

transferor must file a hard copy vessel inspection disclosure report and supporting documentation at the following address:

Department of Natural Resources
Aquatic Resources Division
Derelict Vessel Removal Program
MS 47027
Olympia, WA 98504-7027

(2) **What is the department's procedure for confirming receipt of vessel inspection disclosure documentation?** The department will accept hard copies of a vessel inspection disclosure report and completed Acknowledgement Form from sellers/transferors.

(a) The department will transmit a hard copy or electronic notice of receipt to the seller/transferor within ten business days of receiving the vessel inspection disclosure documentation.

(b) Such department-issued notice of receipt does not constitute concurrence that the vessel inspection disclosure documentation meets the minimum criteria for a vessel inspection disclosure report, specified in WAC 332-30-123 or that the documentation was received prior to ownership transfer of the vessel.

(c) The department will maintain records of vessel inspection disclosure documentation for future determination of potential secondary liability.

(3) **What is the department's procedure for determining and asserting secondary liability?**

(a) The department will notify a prior owner of a vessel, determined to be derelict or abandoned, that they have secondary liability when cost recovery is sought, if:

(i) An authorized public entity has taken, or is in the process of taking, custody of the derelict or abandoned vessel;

(ii) The current owner cannot be identified or is financially insolvent;

(iii) The department does not have vessel inspection disclosure documentation on record for the derelict or abandoned vessel; and

(iv) The vessel was transferred after July 1, 2014.

(b) The department may provide such notice of secondary liability concurrently with a vessel custody action or after an authorized public entity has obtained custody of the vessel.