



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Department of Natural Resources

<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 13-15-103 ; or	<input type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).	<input type="checkbox"/> Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

Vessel Inspection Requirements for Ownership Transfer
 After July 1, 2014, owners of vessels more than sixty-five (65) feet in length and more than forty (40) years old must obtain a vessel inspection prior to transferring such vessels. Owners must provide a copy of the vessel inspection documentation to the transferee and the Washington State Department of Natural Resources prior to the ownership transfer. Owners who comply will avoid secondary liability if the vessel is later abandoned by the transferee or becomes derelict prior to a subsequent ownership transfer.

Hearing location(s):
 Mount Vernon – Tuesday, March 25, 2014 / 6:00 PM
 • Mount Vernon City Council Chambers,
 1805 Continental Place
 Mount Vernon, WA 98273

Vancouver – Wednesday, March 26, 2014 / 6:00 PM.
 • Vancouver Community Library
 901 C Street
 Vancouver, WA 98660

Seattle – Thursday, March 27, 2014 / 6:00 PM.
 • Seattle Public Library, Beacon Hill Branch
 2821 Beacon Avenue S.
 Seattle, WA 98144

Date: _____ Time: _____

Submit written comments to:

Name: Lisa M. Randlette
 Address: Dept. of Natural Resources / MS 47027 /
 Olympia, WA 98504-7027
 e-mail lisa.randlette@dnr.wa.gov
 fax (360) 902-1786 by (date) March 28, 2014

Assistance for persons with disabilities: Contact
Ms. Megan McKay by March 21, 2014
 TTY (360) 902-1125 or () _____

Date of intended adoption: May 6, 2014
 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

This rule specifies financial liability for prior and current owners of commercial and recreational vessels that are greater than sixty-five (65) feet in length and more than forty (40) years old. This rule specifies how sellers / transferors of such vessels will be released from potential, future secondary liability for subsequent abandonment or dereliction of the vessel. by providing inspection reports to the prospective buyer and the Washington State Department of Natural Resources.

Reasons supporting proposal: Compliance with this rule will provide sellers / transferors potential, future protection from secondary liability for subsequent abandonment or dereliction of the vessel.

Statutory authority for adoption: RCW 34.05.328

Statute being implemented: RCW 79.100.150

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

DATE February 18, 2014

NAME (TYPE OR PRINT)
Megan Duffy

SIGNATURE

TITLE
Deputy Supervisor, Aquatics & Environmental Protection

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: February 19, 2014
TIME: 8:56 AM

WSR 14-05-092

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Washington State Department of Natural Resources
Private
Public
Governmental

Table with 3 columns: Name, Office Location, Phone. Rows include Drafting (Lisa M. Randlette), Implementation (Melissa Ferris), and Enforcement (Melissa Ferris).

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

- Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.
No. Explain why no statement was prepared.

Overall the impact on small business is minimal and no formal SBEIS is required. Vessel inspections by either the buyer or seller are considered normal business costs as part of negotiating a sale price, so the rule will not change buyer or seller behavior in most cases.

Is a cost-benefit analysis required under RCW 34.05.328?

- Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name: Lisa M. Randlette
Address: Aquatic Resources Division
Department of Natural Resources
Mail Stop 47027
Olympia, WA 98504-7027
phone (360) 902-1085
fax (360) 902-1786
e-mail lisa.randlette@dnr.wa.gov

No: Please explain:

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 Derelict and abandoned vessel-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 qualifying vessel owner 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 Derelict and abandoned vessel-Minimum criteria for vessel inspection. (1) **What is the minimum criteria for a vessel inspection?** 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 six months prior to the seller transferring ownership of the vessel. Before transferring ownership of the vessel, the owner must provide the department a hard copy of the vessel inspection disclosure report and department-issued Acknowledgement Form with original, notarized signatures of the vessel owner 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; and
- (j) Suitability for service including an estimate of anticipated cost of repairs necessary to return the vessel to seaworthiness.

NEW SECTION

WAC 332-08-124 Derelict and abandoned vessel—Procedure for vessel inspection documentation. (1) **Where must I file my vessel inspection documentation?** The vessel owner 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

(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 qualifying vessel owners.

(a) The department will transmit a hard copy or electronic notice of receipt to the vessel owner 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.