

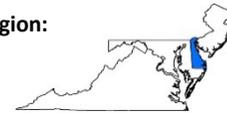
State of Delaware



www.MarineDebris.noaa.gov

Abandoned and Derelict Vessel (ADV) Legislative and Administrative Review - 2015

NOAA Marine Debris Region:
Mid-Atlantic



Definition of a Vessel

Delaware state statutes define a “vessel” in the following manner as defined under Title 23, Chapter 13 of the Delaware Code (23 Del. C. § 1303(d)(3)):

Vessel: Every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice.

Definition of an Abandoned and/or Derelict Vessel

Delaware Code does not include a definition for “derelict” vessel but provides the legal definition for abandoned vessel under 23 Del. C. § 1303(d)(1) as follows:

Abandoned Vessel: means

- a) A vessel that has been left illegally or has remained without permission for more than 30 days on public property, including public marinas, public docks, and public boatyards; or
- b) A vessel that has been found adrift or unattended in or upon the public waters or public subaqueous land of the State, and is found in a condition of disrepair that constitutes a hazard or obstruction to the use of public waters or subaqueous land of the State or that presents a potential or actual health or environment hazard.

Delaware also provides a definition for “abandoned shipwreck” under 7 Del. C. § 5304(a) for Archaeological and Geological Resources:

Abandoned shipwreck: means any shipwreck to which title has been voluntarily given up by the owner or by the owner not taking action after a wreck incident to claim title.

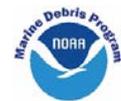
Formal State Program for Abandoned Vessels

Delaware does not have a formal comprehensive program to address abandoned or derelict vessels in the state. Under Delaware Code, several provisions (23 Sec. C. §1303 through §1305) provide the Department of Natural Resources and Environmental Control (DNREC) with the authority to seize, remove, transport, preserve, store, and dispose of any abandoned vessel or property relating to an abandoned vessel.

Any person who abandons a vessel or property relating to a vessel on public or private property for more than 30 days or who violates any other provision of 23 Del. C. § 1303 or § 1304 is subject to a civil penalty of not less than \$100 nor more than \$500 for each offense. The Superior Court of Delaware has jurisdiction over violations of this chapter.

Designation of Abandoned and/or Derelict Vessels

Delaware does not have a formal designation procedure for identifying abandoned and derelict vessels. Under Delaware Code Title 23, section 1303(d)(1), a vessel is considered abandoned and subject to removal by the DNREC if it has been left illegally or has remained without permission for more than 30 days on public property, has been found adrift or unattended



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upon the public lands or waters of the State, is in a condition of disrepair that constitutes a hazard to health or the environment, or is an obstruction to public lands/waters (see actual definitions above).

Pursuant to 23 Del. C. §1303(a):

- a) A person finding or having in that person's own possession a vessel that was adrift or abandoned, or any lost, abandoned, or stolen property relating to a vessel, shall turn the vessel or property over to the Department of Natural Resources and Environmental Control for disposition pursuant to subsection (b) of this section.

In addition, any vessels left unattended at any seawall or other mooring facility in excess of 48 hours without contacting the Division of Fish and Wildlife or a Fish and Wildlife Agent are also considered abandoned and will be deemed so by the state (7 Del. Admin. C. 3100-10.2.5).

For abandoned or derelict vessels found on private lands or waters, the state can declare the vessel as abandoned under 23 Del. C. §1304(a) as follows:

- a) Abandoned vessels and property relating to vessels on the strand on private property, such as private waters, private subaqueous land, private marinas, private docks, and private boatyards, may be seized, removed, transported, preserved, stored, and disposed of by the Department pursuant to the provisions of this chapter upon written request to the Department by the private property owner, if the Department receives funding to provide such a service.

However, this only can occur under Delaware law if funding is provided to the DNREC to cover the costs of such a service. This subsection does not apply, however, under 23 Del. C. 1304(b) if:

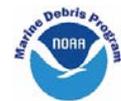
- 1) A vessel whose owner has not complied with the terms of a financial agreement to pay docking, mooring, storage, or similar fees at a private marina, dock, boatyard, or other nautical facility, yet allows the vessel to remain at the marina, dock, boatyard, or other facility;
- 2) A vessel whose owner trespasses on private property by leaving that owner's vessel in another person's boat slip or dockspace without the permission of the other person.

Liens on private property that may come from one of the above circumstances are dealt with under Delaware Code Title 25, Property, Mortgages and Liens. In Delaware, abandoned and derelict vessels are taken into custody by the state, which means that private citizens cannot claim title to the property and it must be turned over to the state (unlike some other states that allow private parties to claim title on abandoned or derelict vessels).

Responsibility for Removal of Abandoned or Derelict Vessels

In Delaware, vessels that have been declared abandoned or derelict become the responsibility of the state, as set forth in 23 Del. C. §1303(a) (see above). The Department may delegate to any local jurisdiction its authority to seize, remove, transport, preserve, store, and dispose of ADVs and related property (23 Del. C. § 1303(g)). The DNREC may not be held liable for any damage that may occur during seizure, removal, transportation, preservation, storage, or disposition.

The financial responsibility for the removal of these vessels also resides with the state, which is entitled to reimbursement for all expenses incurred in the enforcement of 23 Del. C. §1303 and § 1304. The proceeds from the sale of the vessels at public auctions will go towards paying any



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liens and expenses incurred by the Department or by the person who turned the abandoned vessel over to the Department. The owners of any vessels left abandoned at any seawall or other mooring facility or found adrift are responsible for all expenses associated with the abandonment and removal (7 Del. Admin. C. 3100-10.2.5).

Removal and Disposal Requirements/Guidelines

When an abandoned vessel is found on public property, the DNREC, under 23 Del. C. § 1303(e), has the authority to seize, remove, transport, preserve, store, and dispose of it and any property relating to the vessel. The DNREC may use its own personnel, equipment, and facilities or use other persons, equipment, and facilities and cannot be held liable for any damage that may occur during seizure, removal, transportation, preservation, storage, or disposition.

Once a vessel has been “declared” abandoned or derelict and comes into the custody of the state for a period of 6 months, the vessel can then be sold at public auction. When this occurs, the state must adhere to the procedures as outlined under 23 Del. C. § 1303.

Pursuant to 23 Del. C. § 1303(b)(1), whenever the DNREC has a vessel or property relating to a vessel in custody and the person entitled to it cannot be located and/or fails to claim possession within 6 months, the Department may dispose of the vessel or property through public sale provided they give proper notice. The notice must be published in at least one daily newspaper in the State for two successive weeks prior to the sale. The notice must include:

- the time and place of the public sale;
- the terms of the sale; and
- a description of the vessel or property.

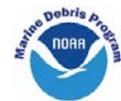
The Secretary of the Department shall, at their discretion, fix the terms of sale and can hire an auctioneer to conduct the sale. If the vessel is of a type that requires a certificate of title or registration issued by the State, the Department must notify the current owner and lienholder on record, if known, by registered mail at least 10 days before the sale. If the address of the owner or lienholders cannot be ascertained, then no notification is required under this paragraph.

The notice pursuant to 23 Del. C. § 1304(b) is not required when the abandoned vessel or property relating to a vessel that creates an actual or potential hazard to navigation and is removed in an emergency situation (23 Del. C. § 1304(b)(2)). When an abandoned vessel is on private property the DNREC, or its delegated authority, can remove it providing the Department receives a written request from the private property owner to remove the vessel, and it receives enough funding to provide such a service (23 Del. C. § 1304(a)).

The Department of Natural Resources and Environmental Control also has the authority to dispose of abandoned, lost or stolen property under Delaware Code Title 29 (§ 8026). Delaware Code does not include any provisions that outline requirements or methods for destroying or salvaging abandoned or derelict vessels.

Differences between Commercial and Recreational Vessel Treatment

Delaware code does not distinguish between commercial and recreational ADVs. It does, however, provide a distinction for archaeological resources, including shipwrecks, which are regulated by the Delaware Department of State pursuant to Title 7, Chapter 53.



Vessel Size Requirements or Limits

There are no size requirements or limitations for abandoned or derelict vessels identified in Delaware Code.

Funding Sources

Delaware does not have a formalized program or a dedicated funding source for the removal of abandoned or derelict vessels. According to the DNREC, when an ADV removal is undertaken, funding originates from the DNREC, Division of Watershed Stewardship, annual General Fund appropriation under dredging, macro algae harvesting and channel marking. The State of Delaware is entitled to reimbursement for all expenses incurred in the enforcement of 23 Del. C. §1303 and § 1304. Any proceeds from the sale of the vessels at public auctions, which remain after any liens and any expenses incurred by the Department or by the person who turned the abandoned vessel over to the Department are paid, are placed in the General Fund account (23 Del. C. § 1303(c)). Reimbursable expenses include all direct expenses associated with the seizure, removal, transportation, preservation, storage, and disposal of a vessel or property relating to a vessel.

Under 23 Del. C. § 1305, the sentencing official shall order the person to reimburse the Department for all expenses incurred by the Department in the enforcement of 23 Del. C. § 1303 and 1304, including the seizure, removal, transport, preservation, storage, and disposal expenses of or for abandoned vessels and any property relating to the abandoned vessel.

Lead State Agency

The Delaware Department of Natural Resources and Environmental Control, Office of the Secretary, is the administering agency for abandoned/derelict vessels in Delaware.

Email: not provided

Phone: 302-739-9000

Website: <http://www.dnrec.delaware.gov/Pages/Portal.aspx>

The Division of Fish and Wildlife, within DNREC, has authority over vessels that are abandoned on seawalls or at other mooring facilities or are found adrift on state waters.

Email: through website

Phone: 302-739-9910 or 302-739-9916 (boat registration)

Website: <http://www.dnrec.delaware.gov/fw/Pages/DFW-Portal.aspx>

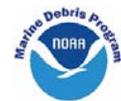
Insurance Requirements for Vessels

Vessel/Boat insurance is not required by law in Delaware.

Specific Location Factors, Limitations and Additional Information

Under Delaware Code 23 § 1303(h), the provisions of Title 23 section 1303 and section 1304 do not apply to archaeological resources, including shipwrecks embedded in or located on the State's subaqueous lands, which are regulated by the Department of State, Division of Historical and Cultural Affairs pursuant to Chapter 53 of Title 7.

The Department of Natural Resources and Environmental Control may only remove vessels from private property if they receive funding from the property owner or Legislature to do so.



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Prioritization Scheme

Delaware Code does not contain any provision for prioritizing the removal of ADVs within state waters. However, according to Delaware Code 23 § 1303(b)(2), no notice is required when an abandoned vessel or property relating to a vessel is removed in an emergency situation that creates an actual or potential hazard to navigation.

Legislation and Administrative Codes

The laws and administrative codes referenced in this document can be accessed from:

Delaware Code:

<http://delcode.delaware.gov/>

Delaware's Administrative Code:

<http://regulations.delaware.gov/AdminCode/>

These Legislative and Administrative Reviews are intended for informational purposes only. They are summaries and not meant to be legal references, and should not be used as such. See the official state statutes and administrative codes for current state laws and rules and regulations for any legal references.