



Guam

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

NOAA Marine Debris Region:
Pacific Islands



Definition of a Vessel

Guam Code Annotated for Health and Safety defines a “vessel” under Title 10, Chapter 69 Boating in the following manner (10 Guam Code Ann. § 69101(1)):

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

The same definition is provided by the Commercial Port of Guam under Chapter 4 of Guam’s Administrative Rules for Harbors and Navigation (10 G.A.R. § 4104(b)(40)). Under Harbors and Navigation Chapter 1, a “vessel” is defined to include the following (10 G.A.R. § 1100(f)):

Vessel: power boats, ships, tugs, sailing vessels, barges, scows, lighters, ferry boats, pleasure craft, floating equipment, house boats, floating gear and any and all other water craft except Public Vessels of the United States.

In addition, within the jurisdiction of the Department of Parks and Recreation, a “vessel” is defined under Guam Administrative Rules, Chapter 23, as (23 G.A.R. §3101(g)):

Vessel: includes every description of watercraft used or capable of being used as a means of transportation with the exception of surfboard or paddleboard.

Definition of an Abandoned and/or Derelict Vessel

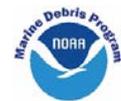
The statutes of Guam do not provide a definition for an “abandoned” or “derelict” vessel. Guam’s Administrative Rules, under the Department of Parks and Recreation, do address “abandoned property” and define it in 23 G.A.R. §3107(4) as a prohibited use on lands and waters under their jurisdiction.

Abandoning property: property shall be considered abandoned if left unattended for a period of seventy-two (72) hours except upon the written permission of the Chief or an authorized representative. After seventy-two (72) hours it shall be impounded by the Department of Public Safety.

Formal State Program for Abandoned Vessels

Guam does not have dedicated funding or a formal program in place to address abandoned or derelict vessels. There are a collection of administrative rules administered through the Department of Parks and Recreation (Title 23) and Commercial Port of Guam (Title 10) that do address abandoned and unsafe or wrecked vessels. At one point Guam did establish an Abandoned Vessel Fund under 10 Guam Code Ann. § 69110; however, it was eventually repealed.

Several other statutes under Title 10 of Guam’s Annotated Code may also be applicable to abandoned and derelict vessels, including littering laws administered through the Department of Public Works pursuant to Chapter 51, and public nuisance laws administered by the Department of Public Health and Social Services through Chapter 20. Under Chapter 20, any



person who maintains or commits any public nuisance, on either public or private property, or who willfully omits to perform any legal duty relating to the removal of a public nuisance is guilty of a misdemeanor (10 Guam Code Ann. § 20107).

In Guam, it is unlawful for any person to willfully or negligently leave or abandon any litter upon any public highway or road, public park or recreation area, on public property not designated for such use, or on private property without written permission of the owner (10 Guam Code Ann. § 51205 (a)). It is also illegal to litter into any of Guam's territorial waters. If a person is convicted of littering they can be fined \$200 to \$1,000.00, and may also be required by the Court to pay the cost of removing the litter (10 Guam Code Ann. § 51207(a)).

Designation of Abandoned and/or Derelict Vessels

The laws and administrative rules of Guam do not outline any procedures for designating vessels as abandoned or derelict. Within the park lands administered by the Department of Parks and Recreation a vessel can be designated as abandoned if it meets the criteria outlined under 23 G.A.R. § 3107(4), and impounded by the Department of Public Safety.

Pursuant to 10 G.A.R. §1156, if an owner or agent sinks or abandons any floating or sinking object in or on the navigable waters and/or shore waters of Guam without the permission of a Harbor Master, they are required to immediately notify the Harbor Master.

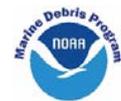
The Guam Police Department can suspend, cancel or revoke the certificate of ownership or the certificate of number of a vessel if they determine that it is mechanically unfit or unsafe to be operated, or if the vessel has been dismantled or wrecked (10 Guam Code Ann. § 69109). The Department of Public Health and Social Services can also declare a vessel as a "public nuisance" under Guam Code Ann. § 20107, and order its removal or cause it to be removed. Public nuisances are defined as anything that is determined by the Director of Public Health and Social Services to be dangerous to life, injurious to health or renders soil, air, water or food impure or unwholesome (10 Guam Code Ann. § 20101(d)).

If a vessel is destroyed or abandoned the owner is required to submit a written notice to the Guam Police Department within 15 days of the action (10 Guam Code Ann. § 69104(i)). Such destruction or abandonment of the vessel will terminate the certificate of number. In addition, if a vessel is within the Agana Boat Basin under the jurisdiction of the Commercial Port of Guam and is lost, destroyed, abandoned or sunk the owner must notify the Department of Parks and Recreation within 7 days of the occurrence (10 G.A.R. § 4115(2)).

Responsibility for Removal of Abandoned or Derelict Vessels

The annotated codes of Guam do not specifically address abandoned or derelict vessels and do not assign responsibility for their removal and disposal. However, under Guam administrative rules, if an owner or agent sinks or abandons any floating or sinking object in or on the navigable waters and/or shore waters of Guam without permission from the state, they are required to immediately notify the Harbor Master and take action to remove the object. If the owner fails to remove the object the Department of Transportation will take any necessary action, through federal or commercial channels, to have the object removed and will charge all costs incurred during the removal to the owner; which may require the posting of a bond to assure payment.

If an object or vessel found on public or private lands has been declared a public nuisance by the Department of Public Health and Social Services pursuant to 10 Guam Code Ann. § 20107, it



will be subject to immediate abatement. After receiving notice of the existence of a public nuisance the responsible person will be given a reasonable period of time to abate the nuisance, depending on the level of threat (disease or injury) to the public. If the responsible party does not abate the threat within the allotted time the Director of Public Health and Social Services has the authority to abate and remove the public nuisance, at the expense of the property owner.

In addition, if a person is convicted of littering under 10 Guam Code Ann. § 51207, they may be required by the Court to pay the cost of removing the litter they caused. Pursuant to 10 Guam Code Ann. § 51202(b), litter is defined as any discarded, used or leftover solid materials, including but not limited to garbage, trash, rubbish, refuse, paper, containers, bulky metallic waste, packing or construction materials or carcasses of dead animals.

Removal and Disposal Requirements/Guidelines

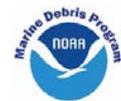
The laws and rules of Guam do not outline any specific requirements that must be followed when removing or disposing of an abandoned or derelict vessel. They do provide state agencies with the authority to remove vessels (objects and property) that are abandoned or derelict and vessels that are declared a public nuisance. They also require a person disposing of or salvaging a derelict vessel to obtain permission from the state.

Pursuant to 10 G.A.R. § 1156, if any owner, agent or individual loses, sinks, drops or abandons any floating or sinking object in or on the navigable waters and/or shore waters of Guam, without permission of the Harbor Master with jurisdiction, they are required to immediately notify the Harbor Master and take immediate action to remove the object. If they fail to do so the Department of Transportation will take whatever action is necessary, through federal or commercial channels, to remove the object. If the Department of Transportation removes the object (vessel) the owner will be liable for all costs incurred by the state during the removal and may be required to post a bond that will assure the costs are paid.

When an owner, agent or individual is planning on disposing or salvaging a derelict craft, vessel or other object of any size, type or description, and the process requires it to be transported across navigable waters of the state, they are required to obtain written permission from a Harbor master if, during the transportation, the vessel might become a hazard to navigation, to dredging or to other state of federal operations, or to the public in those waters (10 G.A.R. §1155).

If a vessel has been declared a public nuisance by the Department of Public Health and Social Services pursuant to 10 Guam Code Ann. § 20107, it becomes subject to immediate abatement. When the Department of Public Health and Social Services identifies a public nuisance they must notify the person responsible and allow them a reasonable period of time to abate the nuisance (10 Guam Code Ann. § 20109). Anyone who maintains or commits a public nuisance on public or private property, or fails to comply with the notice and their legal responsibility relating to the removal of the nuisance will be found guilty of a misdemeanor (10 Guam Code Ann. § 20108).

The time allotted for removal is based upon the threat of disease or injury to the public if the nuisance is not abated, and can range from 24 hours up to 10 days. Every day the nuisance remains after the time allowed in the notice will be considered a separate and distinct offense by the state (10 Guam Code Ann. § 20111). However, more time may be allotted if the



complete abatement or removal will take longer than 10 days, as long as the public is protected from the danger the nuisance poses (10 Guam Code Ann. § 20110).

If the responsible party does not remove/abate the nuisance with the time allowed by the notice, the Director of Public Health and Social Services has the authority to remove the nuisance at the expense of the property owner (10 Guam Code Ann. § 20112). Any expenses incurred by the state will be held as a lien against the property and a personal obligation against the property owner. In addition, the Attorney General can apply for a court injunction or other legal remedies to abate the nuisance (10 Guam Code Ann. § 20111).

If the nuisance is not abated by the responsible party it can be removed from public or private property, at the request of the Director of Public Health and Social Services, by the Department of Public Works using special appropriations from the Department Public Health and Social Services (10 Guam Code Ann. § 20113). If requested, the Chief of Police shall provide police personnel to effect or assist in the abatement and removal, whether on public or private property.

In addition, the littering laws of Guam may be applicable to abandoned and derelict vessels. In Guam, it is illegal for any person to willfully or negligently leave or abandon any litter into any bay, channel, harbor, river, creek, stream, reservoir, coastal waters, or other waters of the Territory (10 Guam Code Ann. § 51205(a)). It is also unlawful to litter upon any public highway or streets, public parks or recreation areas, other public property except as designated for such use, or upon property owned by another person without their written permission. In addition to any fines assessed by the state the responsible person may be held liable for the costs of removing the litter.

Differences between Commercial and Recreational Vessel Treatment

The laws of Guam do not distinguish between commercial and recreational vessels, as they pertain to abandoned or derelict vessels.

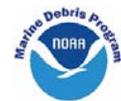
Vessel Size Requirements or Limits

Guam does not establish any size requirements or limits under the laws pertaining to abandoned or derelict vessels. In fact, under 10 G.A.R. §1155, the rules for acquiring a permit to dispose of or salvage a derelict vessel state that a permit is required for a “vessel or other object of any size, type or description.”

Funding Sources

The Territory of Guam does not have a dedicated funding source for removing and disposing of abandoned or derelict vessels. The Territory’s public nuisance and littering laws stipulate that the responsible party is liable for the costs associated with the removal of the litter (10 Guam Code Ann. § 51205).

Guam’s public nuisance laws also make the person responsible liable for the removal costs, which will be held as a lien against the property and a personal obligation against the property owner (10 Guam Code Ann. § 20112). If the Department of Public Works is forced to remove a public nuisance at the request of the Department Public Health and Social Services the funds for the removal can be obtained using special appropriations through the Department Public Health and Social Services (10 Guam Code Ann. § 20113).



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Guam also has a Litter Control Revolving Fund, that was established under 10 Guam Code Ann. § 51204). This fund is administered by Guam's Environmental Protection Agency, and receives half of the monies from all assessments, fines, bail forfeitures and other funds collected or received pursuant Article 10. This fund is used to support the administration and implementation Article 10 and other agency programs including the cleanup of litter from public recreational areas and other public lands that are most visible to the public.

In addition, Guam has a Park Improvement Fund administered by the Department of Parks and Recreation that receives monies from fees and donations (23 G.A.R. § 3113). This fund is maintained to pay for park improvements, which may include the removal of sunken vessels or vessels that are considered a hazard to other boats within designated parks.

Lead State Agency

Guam does not have a lead agency that is in charge of abandoned and derelict vessels. The following agencies all have a role in addressing abandoned or derelict vessels in the Territory.

The Department of Parks and Recreation administers the laws that apply to Guam's park lands and marinas.

Email: dpradmin@dpr.guam.gov

Phone: 671-475-6289

Website: <http://dpr.guam.gov/>

Guam's Department of Public Health and Social Services is responsible for administering the laws relating to public nuisances and litter, through the Department of Public Safety and the Environmental Protection Agency, respectively.

Email: through website

Phone: 671-735-7305

Website: <http://dphss.guam.gov/>

The Guam Police Department is responsible for enforcing the boating laws of Guam, including those relating to abandoned and derelict vessels.

Email: N/A

Phone: 671-472-8911

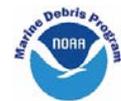
Website: <http://gpd.guam.gov/>

Insurance Requirements for Vessels

Vessel insurance is not required under the laws or administrative rules of Guam.

Specific Location Factors, Limitations and Additional Information

When a vessel is located in a state marina it falls under the jurisdiction of the Department of Parks and Recreation Resources Division. Pursuant to 23 G.A.R. § 3115, any persons docking, tying or mooring a boat in a marina that later sinks or creates a hazard to other boats, must remove the vessel within 10 days of receiving written notice from the Department of Parks and Recreation. Any action taken by the Department to remove the vessel shall be at the sole cost and risk of the owner of the vessel (23 G.A.R. § 3115(h)). The Department of Parks and Recreation has the authority, when necessary and proper to do so, to move any vessel from one part of the marina to another, or remove the vessel from the confines of the marina and/or store it.



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Prior to removing the vessel the Department of Parks and Recreation must notify the owner and give them the opportunity to remedy the situation by removing the vessel or otherwise (23 G.A.R. § 3115(i)). If they fail to comply with the notice within 10 days the Department can remove the vessel or hire an independent contractor to do so at the sole risk and expense of the owner. If a vessel is moored and in danger of sinking, the Department shall take the appropriate actions and remove, save or rescue the vessel at the expense of the owner; providing they made a reasonable effort to give notice and opportunity to the owner to take action (23 G.A.R. § 3115(j)). If it is considered an emergency the vessel can be removed without notification.

In the event a vessel is abandoned, the Chief of Parks and Recreation may publicly auction off such undocumented vessel, and apply the proceeds to any unpaid charges or expenses owed by the owner (23 G.A.R. § 3115(n)). Any remaining proceeds will be credited to the owner. If the abandoned vessel is legally documented the payment of any fees or charges shall be referred to the U.S. Attorney for further action. These same regulations also apply to any vessels located in the Agana Boat Basin, pursuant to Title10, Chapter 4 of Guam's Administrative Rules and Regulations.

Prioritization Scheme

Guam does not use a prioritization scheme for removing and disposing of abandoned or derelict vessels. If a derelict or abandoned vessel is considered dangerous to life, injurious to health or renders soil, air, water or food impure or unwholesome and declared a public nuisance under 10 Guam Code Ann. § 20107 by the Department of Public Safety, it must be removed immediately by the owner or within the time period allotted in the public nuisance notice. In addition, vessels found in marinas that sink or are a danger to other vessels can be removed immediately without notice, if the situation is considered an emergency (23 G.A.R. § 3115(j)).

Legislation and Administrative Codes

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

Guam Code Annotated (2015):

<http://www.guamcourts.org/CompilerofLaws/gca.html>

Guam Administrative Rules and Regulations (2004):

<http://www.guamcourts.org/CompilerofLaws/gar.html>

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.