

State of Texas

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

NOAA Marine Debris Region:
Gulf of Mexico



Definition of a Vessel

The State of Texas provides a definition of both a “vessel” and a “boat” under Parks and Wildlife Code (Tex. Bus. & Com. Code § 31.003) as follows:

Vessel: means any watercraft, other than a seaplane on water, used or capable of being used for transportation on water.

Boat: means a vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern.

Texas statutes also define a “vessel” under the Oil Spill and Response Act of 1991 (Tex. Bus. & Com. Code § 40.003(28)):

Vessel: includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.

In addition, Texas provides a definition for “watercraft” under Chapter 683, Abandoned Motor Vehicles (Tex. Bus. & Com. Code § 683.001(8)):

Watercraft: means a vessel subject to registration under Chapter 31, Parks and Wildlife Code.

Definition of an Abandoned and/or Derelict Vessel

Texas law does provide definitions for both “abandoned” and “derelict” vessels, which are provided under several statutes and within the administrative codes of the state. An abandoned vessel is defined in the following manner when found on private property (Tex. Bus. & Com. Code § 31.003-18):

Abandoned vessel (or outboard motor): means a vessel or outboard motor that has remained on private property without the consent of the owner or person in charge of the property for more than seven consecutive days.

Under Tex. Bus. & Com. Code § 683.071 of the transportation code a definition is provided for a “junked vehicle”; a definition which encompasses motor vehicles, aircraft and watercraft. This definition applies to watercraft that do not have a current certificate of number on board and lack valid federal marine documentation from the US Coast Guard or another agency.

Junked Vehicle: means a vehicle that:

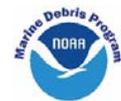
(1) is self-propelled; and (2) is:

(A) wrecked, dismantled or partially dismantled, or discarded; or

(B) inoperable and has remained inoperable for more than:

(i) 72 consecutive hours, if the vehicle is on public property; or

(ii) 30 consecutive days, if the vehicle is on private property.



Within Texas' Administrative Codes for Natural Resources and Conservation "abandoned" and "derelict" vessels are defined under 31 Tex. Admin. Code § 19.71:

Abandoned vessel: vessel that has been left, moored, or anchored in the same area without the express consent, or contrary to the rules of, the owner, manager, or lessee of the submerged lands below or on which the vessel is located for either a period of more than 21 consecutive days or for more than a total of ninety days in any three hundred sixty-five-day period, and the vessel's owner is:

- (A) Not known or cannot be located; or
- (B) Known and located but is unwilling to take control of the vessel. For the purposes of this subchapter only, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on submerged lands.

Derelict vessel: vessel that is either wrecked or in a substantially dismantled condition.

In addition, Texas also provides a definition for "wrecked" vessels under 31 Tex. Admin. Code § 19.71:

Wrecked: A vessel that is fully or partially submerged, resting fully or partially on submerged land, or is in danger of sinking.

Formal State Program for Abandoned Vessels

The State of Texas does have a formal program for dealing with both abandoned and derelict vessels under the Oil Spill Prevention and Response Act (Tex. Bus. & Com. Code § 40) that is administered by the Texas General Land Office through Administrative Codes. These codes address the taking, removal and disposal of abandoned and derelict vessels while also addressing the right of ownership. Vessel registration and titling are administered by state statutes under the purview of the Texas Parks and Wildlife Department; while the Department of Motor Vehicles also has specific statutes that deal with nuisance or "junked" watercraft.

Texas also established a Coastal Protection Fund, under the Oil Spill Prevention and Response Act which is designed to pay for the costs of oil spill response and prevention and can be used to cover the costs and damages of activities authorized under this chapter (Tex. Bus. & Com. Code § 40.151) . Funds may also be available for vessel removal from special funds established under Tex. Bus. & Com. Code § 52.297 and § 53.155 which can be used for conservation, reclamation or construction.

Any person who intentionally leaves, abandons or maintains a wrecked, derelict or substantially dismantled vessel (or structure) in or on coastal waters, on public or private lands, or at public or private port/docks is guilty of a class A misdemeanor (Tex. Bus. & Com. Code § 40.251(a)). This also applies to vessels that are discharging oil, regardless of the vessels condition. Any person responsible for a vessel that has an unauthorized discharge of oil are subject to a civil penalty of up a maximum of \$125,000 under Tex. Bus. & Com. Code § 40.251. If any responsible person, who knows or has reason to know of the discharge, fails to give immediate notification to the commissioner of the GLO can face a civil penalty of up to \$250,000 or \$500,000 if a corporations or other entity is responsible (Tex. Bus. & Com. Code § 40.251(b)). Additional penalties may apply depending on the circumstances of the discharge.



In addition, if a vehicle is declared to be a public nuisance (junked vehicle) under Tex. Bus. & Com. Code § 683.072 the person responsible can be charged with a misdemeanor and fined up to \$200 (Tex. Bus. & Com. Code § 683.073).

Designation of Abandoned and/or Derelict Vessels

Under Chapter 683 of Texas transportation code, as it applies to abandoned watercraft, a motor vehicle is considered abandoned if it:

- (1) is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;
- (2) has remained illegally on public property for more than 48 hours;
- (3) has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;

Pursuant to Tex. Bus. & Com. Code § 683.011 motor vehicles, aircraft, watercraft or outboard motors abandoned on public or private property can be taken into custody by a law enforcement agency. The agency with custody can use its assets or outside contractors to remove, store, send notice and dispose of the abandoned watercraft (Tex. Bus. & Com. Code § 683.011(b)). When taking an abandoned watercraft (or other vehicle) into custody the law enforcement agency is required to notify the last known registered owner and any lienholders. Pursuant to Tex. Bus. & Com. Code § 683.012(b), the notice must be sent by certified mail within 10 days of taking custody and:

- (2) specify the year, make, model, and identification number of the item;
- (3) give the location of the facility where the item is being held;
- (4) inform the owner and lienholder of the right to claim the item not later than the 20th day after the date of the notice on payment of:
 - (A) towing, preservation, and storage charges; or
- (5) state that failure of the owner or lienholder to claim the item during the period specified by Subdivision (4) is:
 - (A) a waiver by that person of all right, title, and interest in the item; and
 - (B) consent to the sale of the item at a public auction.

If the last registered owner or all lienholders cannot be determined the notice must be published, within the same time period, in a newspaper of general circulation in the area where the watercraft was taken into custody (Tex. Bus. & Com. Code § 683.012(c)). If the law enforcement agency determines that a theft report was filed on the watercraft they are required to notify the person who filed the report by regular mail (Tex. Bus. & Com. Code § 683.012(f)). The law enforcement agency with custody of the abandoned watercraft is entitled, under Tex. Bus. & Com. Code § 683.013, to reasonable storage fees that accrue until the charges are paid and the watercraft is removed. If the watercraft is not claimed the owner or lienholder waives all rights to the item and consents to the sale, transfer or use of the watercraft by the law enforcement agency (Tex. Bus. & Com. Code § 683.014(a)).

In addition, Tex. Bus. & Com. Code § 683 addresses vehicles abandoned in storage facilities (subchapter C) and the demolition of abandoned vehicles (subchapter D); however watercraft are not specifically mentioned under these subsections.

Pursuant to Tex. Bus. & Com. Code § 683.072 derelict watercraft that meet the definition of a “junked vehicle” (see definitions above) can be declared to be a public nuisance by the



Department of Motor Vehicles if they are visible from a public place or right-of-way and meet the following criteria:

- (1) is detrimental to the safety and welfare of the public;
- (2) tends to reduce the value of private property;
- (3) invites vandalism;
- (4) creates a fire hazard;
- (5) is an attractive nuisance creating a hazard to the health and safety of minors;
- (6) produces urban blight adverse to the maintenance and continuing development of municipalities; and
- (7) is a public nuisance.

If a vehicle is declared to be a public nuisance (junked vehicle) under Tex. Bus. & Com. Code § 683.072 the person responsible can be charged with a misdemeanor and fined up to \$200 (Tex. Bus. & Com. Code § 683.073). If convicted, the court will order abatement and the removal of the nuisance vehicle. Abatement procedures must prohibit the vehicle from being repaired after removal, allow a hearing upon request, and require that notice be given to the Texas Department of Motor Vehicles (Tex. Bus. & Com. Code § 683.074(b)).

Under Tex. Bus. & Com. Code § 31.0466, if a person finds an abandoned vessel on their property they can apply for a certificate of title through the Department of Fish and Wildlife, providing they report the vessel as abandoned to local law enforcement through certified mail at least 30 days prior to filing an application. In order to file an application they must secure a bond for 1.5 times the value of the vessel, as determined by the Department, and satisfactorily prove that the vessel was not stolen and they are not attempting to defraud the owner or lienholders. They must agree to conditions which indemnify all previous and subsequent owners and lienholders against any expense, loss or damage that may occur if the certificate is issued or if there is a problem with a security interest. In addition they are required to post notices of the title application as designated by departmental rules.

The Department of Fish and Wildlife will return the bond, three years after taking effect, unless the Department has been notified of a pending action to recover on the bond (Tex. Bus. & Com. Code § 31.0466(d)). Once the bond has been returned the Department will issue a certificate of title (Tex. Bus. & Com. Code § 31.0466(e)) free of all liens and claims of ownership (Tex. Bus. & Com. Code § 31.0466(g)). If the previous owners or lienholders do not claim the vessel before the certificate is issued they consent to the new title and waive all rights and interests in the vessel (Tex. Bus. & Com. Code § 31.0466(f)).

In order to apply for a certificate of title a person must fill out a form with the Department that contains information about the vessel, owner, purchaser and security interests as detailed under Tex. Bus. & Com. Code § 31.047(b). The application must also include evidence that establishes their entitlement to the title pursuant to Tex. Bus. & Com. Code § 31.047(c).

The Texas' Water Safety Act also requires the owner of a vessel to notify the Department of Fish and Wildlife within a reasonable time if they transfer interest, abandon or destroy the vessel (Tex. Bus. & Com. Code § 31.037). If the vessel is destroyed or abandoned its certificate will be canceled by the Department.

Under the Land, Timber and Surface Resources chapter (Tex. Bus. & Com. Code § 51) the commissioner of the General Land Office also has the right to remove and dispose of facilities



and structures on land owned by the state if they are there without proper easements or leases or pose an imminent and unreasonable threat to public health, safety and welfare (Tex. Bus. & Com. Code § 51.3021(a)). Vessels are subject to this legislation if they are moored or left in place for at least 21 days in a wrecked, derelict or substantially dismantled condition (Tex. Bus. & Com. Code § 51.3021(k)).

If a vessel is subject to this legislation the commissioner must provide a written notice to the owner or operator of the vessel before the vessel can be removed (Tex. Bus. & Com. Code § 51.3021(b)). This notice must state that the vessel is without proper easement or lease or that it threatens public health, safety or welfare and that it must be removed within 30 days of the date the notice was served. If the vessel is considered a threat to the public the commissioner can require that the vessel be removed within a “reasonable amount of time”, as specified on the notice. The notice must also indicate that the person can request a hearing in writing within 30 days and that failure to remove the vessel can result in a penalty under Tex. Bus. & Com. Code § 51.3021(b)), liability for the costs of removing the vessel, liens on property adjacent to the littoral zone where the vessel was found, or a combination of these. Notification must be given in person or by certified mail (return receipt requested) unless the address of the responsible person is not known, in which case the notice must be posted on the vessel or published in a county newspaper of general circulation two times within 10 consecutive days (Tex. Bus. & Com. Code § 51.3021(c)).

If the responsible person responds and requests a hearing from the commissioner then it must be granted. If they fail to respond within the allotted time they waive all rights to judicial review and must immediately remove the vessel and pay the assessed penalties (Tex. Bus. & Com. Code § 51.3021(e)).

Responsibility for Removal of Abandoned or Derelict Vessels

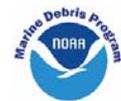
Under Texas statutes the law enforcement agency with custody can use its assets or outside contractors to remove, store, send notice and dispose of an abandoned watercraft (Tex. Bus. & Com. Code § 683.011(b)); however, they are not required by law to take this responsibility.

According to Tex. Bus. & Com. Code § 51.3021(g) of the Land, Timber and Surface Resources chapter the commissioner may contract for the removal and disposal of vessels subject to the provisions and may pay for it with a special fund established under Tex. Bus. & Com. Code § 52.297 and § 53.155 or by appropriations. Pursuant to Tex. Bus. & Com. Code § 51.3021(h), if the responsible person does not pay for the removal costs, penalties and other associated costs the commissioner has a number of options including salvage, liens, civil proceeding or other legal options to recover the costs incurred by the state.

The Oil Spill Prevention and Response Act of 1991 also includes a definition for the “person responsible” or “responsible person” under Tex. Bus. & Com. Code § 40.003-20 as it relates to abandoned vessels:

Person Responsible of Responsible Person: means

- A. the owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate;
- B. in the case of an abandoned vessel or terminal facility, the person who would have been the responsible person immediately prior to the abandonment; and



- C. any other person who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

Removal and Disposal Requirements/Guidelines

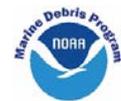
Pursuant to lien Tex. Bus. & Com. Code § 683.014(b), if an abandoned watercraft taken into custody is to be sold a proper notice of the public auction must be provided, which includes notifying anyone holding a storage lien. When the item is sold the purchaser gets free and clear title and the right to register the watercraft. The law enforcement agency has the right to transfer unclaimed watercraft to the Parks and Wildlife Department to be utilized as part of an artificial reef or for any other permitted use (Tex. Bus. & Com. Code § 683.014(d)). Pursuant to Tex. Bus. & Com. Code § 683.016, the law enforcement agency can also use the vehicle (or watercraft) for agency purposes or transfer it to another local or county agency, groundwater conservation district or school district, if they comply with the notification required by Tex. Bus. & Com. Code § 683.012 (as outlined above).

Under Tex. Bus. & Com. Code § 683.015(a), the law enforcement agency is entitled to reimbursement from the sale proceeds for the costs associated with taking custody, including the costs of the auction, notification, towing, preservation and storage. Any remaining proceeds belong to the owner or lienholder(s); however, if the remaining proceeds are not claimed within 90 days they can be used to pay for the costs associated with other abandoned watercraft taken into custody (Tex. Bus. & Com. Code § 683.015(c)). Excess funds can also be transferred (if over \$1000) from the municipality or county to their general revenue account for use by law enforcement or, in smaller counties, by an attorney representing the state (Tex. Bus. & Com. Code § 683.015(d)).

The Department of Motor Vehicles, while following the procedures for abatement and removal under Tex. Bus. & Com. Code § 683.074(b), must provide at least 10 days' notice of the nature of the nuisance (Tex. Bus. & Com. Code § 683.075). The notice must be personally delivered or sent by certified mail to the last known registered owner, all lienholders and the owner or occupant of the property where the nuisance vehicle is located. If no address is available the notice can be placed on the nuisance vehicle. The notice must state that the nuisance must be abated and removed within 10 days and that a hearing can also be requested if done within that time period. Once a junked watercraft is removed the certificate of title will be canceled by the Parks and Wildlife Department (Tex. Bus. & Com. Code § 683.074(h)). Pursuant to Tex. Bus. & Com. Code § 683.078, junked watercraft may be removed to a scrapyard, vehicle demolisher, or other suitable site operated by the municipality or county.

Vessels which are removed pursuant to Tex. Bus. & Com. Code § 40.108, must be disposed of in any reasonable and environmentally sound manner, giving deference to those methods which can generate monetary benefits. If the vessel has no value then the least costly method of disposal must be chosen (Tex. Bus. & Com. Code § 40.108(d)). Except as noted in Tex. Bus. & Com. Code § 40.180(d)(1), any proceeds from the sale of the vessel (or structure) that exceed the removal, storage and disposal costs shall be credited to the Coastal Protection Fund.

If the commissioner finds that a person holds a security interest in an abandoned vessel notice must be given under Tex. Bus. & Com. Code § 40.254 (Tex. Bus. & Com. Code § 40.108(d)(1)). If the vessel is not removed within a reasonable amount of time, as specified in the notice, the



commissioner may then remove and dispose of the vessel (or contract it out). The interests of the State in recovering the costs associated with the removal and disposal take priority over the interest of the security holder, however, any proceeds left after recovering the costs shall be paid to the security holder in an amount not to exceed the secured debt. The commissioner must make all information on the abandoned vessel accessible to the public through the General Land Office's website, and in any other medium, as determined by the commissioner (Tex. Bus. & Com. Code § 40.108(d)(3)).

Differences between Commercial and Recreational Vessel Treatment

No differences in treatment are specified under Texas statutes for commercial or recreational vessels.

Vessel Size Requirements or Limits

Texas law does not specify any size requirements or limits for ADV.

Funding Sources

Funding the removal of abandoned and derelict vessels in Texas comes from a variety of sources. The costs incurred by law enforcement agencies for removing abandoned watercraft will, if possible, be reimbursed from the proceeds generated from selling or salvaging the vessel. Texas has also established a Coastal Protection Fund, under the Oil Spill Prevention and Response Act of 1991 (Tex. Bus. & Com. Code § 40.151). This fund is designed to pay for the costs of oil spill response and prevention and can be used to cover the costs and damages of activities authorized under Tex. Bus. & Com. Code § 40. Costs include those associated with the notification, removal and disposal of abandoned and derelict vessel which present a threat of oil discharge. This fund receives money from a coastal protection fee imposed on oil sales.

Funds may also be available for vessel removal from special funds established under Tex. Bus. & Com. Code § 52.297 and § 53.155. Under these codes a fund was established for the compensation of damages from use of surface (mineral leases) on school lands, which receives money from lease provisions to compensate for damages from surface uses. Money from this fund can be used for conservation, reclamation or construction.

Lead State Agency

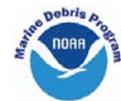
County or municipal law enforcement agencies are responsible for taking custody of abandoned vessels found on public and private property.

The General Land Office of Texas administers abandoned vessels and structures in coastal waters under the Oil Spill Prevention and Response Act.

Email: through website
Telephone: 800-998-4456
Website: <http://www.glo.texas.gov/>

The Texas Parks and Wildlife Department administers the registration and titling of vessels and vessels abandoned in state parks.

Email: through website
Telephone: 800-792-1112
Website: <http://tpwd.texas.gov/>



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The Department of Motor Vehicles administers nuisance vehicles and watercraft in the state of Texas.

Email: through website

Telephone: 888-368-4689

Website: <http://www.txdmv.gov/>

Insurance Requirements for Vessels

Vessel insurance is not a requirement in Texas.

Specific Location Factors, Limitations and Additional Information

The Oil Spill Prevention and Response Act of 1991 also contains provisions covering derelict vessels. Under the Oil Spill Prevention and Response Act it is unlawful, without the consent of the commissioner of the General Land Office, to leave, abandon or maintain any structure or vessel in or on coastal waters, public and private lands, or at a public or private dock if it is in a wrecked, derelict, or substantially dismantled condition and the commissioner finds it to be (Tex. Bus. & Com. Code § 40.108(a)):

- (1) involved in an actual or threatened unauthorized discharge of oil;
- (2) a threat to public health, safety, or welfare;
- (3) a threat to the environment; or
- (4) a navigation hazard.

If an abandoned vessel meets one of these conditions the commissioner may remove and dispose of the vessel, or contract someone to do so, and recover the associated costs of removal, storage and disposal from the owner or operator (Tex. Bus. & Com. Code § 40.108(b)). Recovered costs shall be deposited into the coastal protection fund. The commissioner must comply with notification requirements under Tex. Bus. & Com. Code § 40.254 (hearing) before removing the vessel unless the vessel is discharging oil or in danger of doing so (Tex. Bus. & Com. Code § 40.108(c)).

If the investigation concludes that there is a need to remove a vessel under Tex. Bus. & Com. Code § 40 the commissioner is required to issue a preliminary report after the investigation is concluded (Tex. Bus. & Com. Code § 40.254(b)). This report must:

- (1) state the facts that support the commissioner's conclusion;
- (2) in the case of a derelict vessel or structure, determine whether the vessel or structure is considered:
 - (A) a numbered vessel; or
 - (B) a vessel or structure that has no intrinsic value;
- (3) recommend:
 - (A) that a penalty be imposed;
 - (B) that a certificate be suspended;
 - (C) that a derelict vessel or structure be removed or disposed of; or
 - (D) any combination of remedies under Paragraphs (A)-(C); and
- (4) if a penalty under Subdivision is recommended, recommend the amount of the penalty.

The commissioner is required to serve written notice of the report to the person charged with the violation within 10 days of the report being issued (Tex. Bus. & Com. Code § 40.254(c)). The notice must be provided in person or by certified mail (return receipt requested) unless the



address of the person is unknown, in which case, the notice must be posted on the vessel or published on the Texas General Land Office website at least two times within 10 consecutive days. This notice must include:

- (1) a brief summary of the findings;
- (2) a statement of the commissioner's recommendations;
- (3) a statement of the right of the person charged with the violation to a hearing; and
- (4) a copy of the preliminary report.

Pursuant to Tex. Bus. & Com. Code § 40.254(d), no later than 20 days after the notice was issued the person charged with the violation or claiming ownership may consent to the report and included recommendations or request a hearing to dispute the charges under Tex. Bus. & Com. Code § 40.254(f). If the person charged consents or does not respond the commissioner can then take the recommended actions (from the preliminary report) providing they serve a written notice of the decision to the person charged (following the same notification requirements as the preliminary report) (Tex. Bus. & Com. Code § 40.254(e)). The person charged will then be held responsible and must comply with the order, including the removal order and any penalties assessed. Within 30 days of the commissioner's final order the vessel owner or person charged with the violation must comply with the order or file a petition for judicial review (Tex. Bus. & Com. Code § 40.254(g)). If the owner or person charged fails to comply or file a judicial review the commissioner may refer the matter to the attorney general for collection and enforcement.

The Texas Parks and Wildlife Department can also remove and store any vehicle, boat or other property if left in a state park unlawfully at the owner's expense (31 Tex. Admin. Code § 59.132). Within state parks it is also considered an offense to abandon vehicles or personal property or leave any vehicle, boat, barge or property unattended if it creates a hazard or unsafe condition (31 Tex. Admin. Code § 59.134).

Texas' Parks and Wildlife Code also addresses abandoned and derelict vessels under the shrimp vessel buyback program established under Tex. Bus. & Com. Code § 77.119. Any person who is selected by the Parks and Wildlife Department for license buyback must execute a contract that states they will not abandon or dispose of any vessel in violation of state law. The contract must also include specific references to Tex. Bus. & Com. Code § 40.251, including the penalties, and an agreement to forfeit any money paid to them under the buyback program to the coastal protection fund if they illegally abandon or dispose of any vessel.

Prioritization Scheme

The Oil Spill prevention and Response Act gives the commissioner of the General Land Office the authority under Tex. Bus. & Com. Code § 40.180(e) to establish a system for prioritizing vessel removals. These laws, however, do not impose a duty on the state to remove these vessels (Tex. Bus. & Com. Code § 40.108(f)).



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Legislation and Administrative Codes

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

Texas Statutes (2013):

<http://www.statutes.legis.state.tx.us/>

Texas Administrative Code (2015):

<http://www.sos.state.tx.us/tac/>

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.