

ADMINISTRATIVE CODE BOARD OF COUNTY COMMISSIONERS	
CATEGORY: SAFETY/RISK MANAGEMENT/DISASTER PREPAREDNESS	CODE NUMBER: AC-7-10
TITLE: Derelict & Abandoned Vessel Removal Program	ADOPTED: 5/11/04
	AMENDED: 12/12/06, 02/04/20
	ORIGINATING DEPARTMENT: Division of Natural Resources

SECTION 1: PURPOSE/SCOPE

This program provides for a mechanism to address the problem of derelict or abandoned vessels in coastal waters of the State of Florida and Lee County, Florida.

SECTION 2: POLICY/PROCEDURE

The Board of County Commissioners of Lee County, Florida, finds that there has been an increase in the number of derelict and abandoned vessels upon public waterways. These vessels are public nuisances and safety hazards as they often pose hazards to navigation, detract from the aesthetics of Lee County's waterways, and threaten the environment with the potential release of hazardous materials. The increased costs associated with the disposal of derelict and abandoned vessels are substantial, and that in many cases there is no way to track down the current vessel owners in order to seek compensation. As a result, the cost associated with the removal of derelict vessels becomes a burden on public entities and the taxpaying public.

The legal authority extended to Authorized Public Entities (APEs) through Fla. Stat. §§376.15(3)(a) and 823.11 is intended to provide coastal local governments with the tools to deal with the public nuisances and safety hazards caused by abandoned and derelict vessels.

SECTION 3: DEFINITIONS

For the purposes of this code, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The words "shall" or "will" are always mandatory and not merely directory.

A. Abandoned Vessel *Abandoned Vessel* means a vessel that is considered abandoned if the vessel's owner is not known or cannot be located, or if the vessel's owner is known and located but is unwilling to take control of the vessel, and the vessel has been left, moored, or anchored in, without the express consent, or contrary to the rules, of the owner, manager, or lessee of the aquatic lands below or on which the vessel is located. An abandoned vessel is also abandoned property as defined in Fla. Stat. Chapter 705.

- B. Aquatic Lands *Aquatic Lands* means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.
- C. Authorized Public Entity *Authorized Public Entity* or *APE* means any of the following: the Lee County Division of Natural Resources; the Lee County Sheriff's Department; the State of Florida Fish and Wildlife Commission; Florida Department of Environmental Protection; a port district; and any city, town, or county or special district with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located, which has been given removal authority by the Commission, officers of the Commission, and any law enforcement agency or officer as required by Fla. Stat. §823.11.
- D. Beach *Beach* means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.
- E. Derelict Vessel *Derelict Vessel* means any vessel, as defined by Fla. Stat. §823.11, and any vessel, as defined in Fla. Stat. §327.02, that is left, stored, or abandoned:
1. In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;
 2. At any port in this state without the consent of the agency having jurisdiction thereof; or
 3. Docked or grounded at or beached upon the property of another without the consent of the owner of the property.
- F. DHSMV *DHSMV* means the State of Florida Department of Highway Safety and Motor Vehicles.
- G. Director *Director* means the Director of Lee County Division of Natural Resources.
- H. Division of Natural Resources *Division of Natural Resources* or *DNR* means the Lee County Division of Natural Resources.
- I. Hearing Examiner *Hearing Examiner* means the Lee County Hearing Examiner.
- J. In the Same Area A vessel is considered to be "in the same area" if it is within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.
- K. Littoral Waters *Littoral Waters* means that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark.
- L. Moorage Facility *Moorage facility* means any properties or facilities owned or operated by any port district, city, town, metropolitan park district, or county, which are capable of use for the moorage or storage of vessels.
- M. Operate *Operate* means to navigate or otherwise use any vessel in, on or under the water.
- N. Owner *Owner* means any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest. Use of the term "Owner" includes both singular and plural, as well as use of the terms "Named or Noticed Party" and "Responsible Party".
- O. Person *Person* means any individual, partnership, firm, corporation, association or other entity.

P. Vessel *Vessel* means an engine propelled or other artificially-propelled vehicle and every other description of boat, watercraft, tug, barge, air boat, and sailboat (with or without any type of auxiliary or standby propulsion or power generating system) - other than a seaplane - on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term does not include unpowered rafts, floats or floatation devices, whether of canvas, vinyl, rubber, Styrofoam or other substance, intended or capable of assisting in the floatation of a person on or in the water.

Q. Waters of the State *Waters of the State* means any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers and canals under the jurisdiction of this state.

R. Water-oriented Structure *Water-oriented structure* means and includes, without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, boat lift, davit, boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing or launching of watercraft, erosion control and shoreline stabilization, or for water oriented activities.

SECTION 4: ENFORCEMENT

A. AREA OF ENFORCEMENT

The area of enforcement of the provisions of this Code shall be all navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within Lee County, including all public waters within the jurisdiction of the County in which the tide ebbs and flows.

B. MEANS OF ENFORCEMENT - Roles and Responsibilities

The provisions of this Code will be enforced by members of all duly authorized law enforcement agencies within the County and by appropriate Lee County Department(s) or Division(s), or other Authorized Public Entity (APE).

C. PRIVATE LANDOWNERS, LESSEES, AND OPERATORS

If an abandoned or derelict vessel is located on privately owned aquatic lands or leased public lands, and the owner of the vessel is not known or cannot be located, the owner, operator, or lessee of the private facility or the owner of the privately owned aquatic lands will have the primary responsibility for the removal of the vessel.

D. REMOVAL AUTHORITY

The County has the authority, subject to the processes and limitations outlined in Fla. Stat. §705.103(2) to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of Lee County in a manner that best benefits the citizens of Lee County and minimizes environmental impacts.

If another Authorized Public Entity (APE) with the primary removal responsibility is unwilling or unable to exercise removal authority, it may request that Lee County assume the Authorized Public Entity's authority for a particular vessel. The County may, at its discretion, assume the APE's authority after being requested to do so. The criteria Lee County will consider when deciding whether or not to assume an APE's authority for a vessel is found below.

E. REQUESTING LEE COUNTY DEPARTMENT OF NATURAL RESOURCES (DNR) TO ASSUME PRIMARY RESPONSIBILITIES OF ANOTHER APE

If an APE has the primary responsibility for a vessel and is unwilling or unable to exercise its authority, it may request, in writing, that DNR assume the APE's authority for the vessel. This would be the case when another APE owned, leased, or operated aquatic lands, or when another APE had been authorized by an owner, lessee, or operator of aquatic lands to act on their behalf. The DNR may, at its discretion, assume the APE's authority for a particular vessel after being requested to do so. The criteria Lee County will use to determine whether or not it will assume an APE's authority for a vessel include, but are not limited to:

1. Ability of the Primary APE to Fund the Removal

Primary APEs that do not have the financial ability to fund the removal, but are willing to partner and/or share costs may use this as a valid reason to request DNR take responsibility for the removal of a vessel. Primary APEs with the ability to fund a vessel removal will be required to demonstrate that other conditions exist that would justify DNR assuming responsibility for the removal of that vessel.

2. Technical Complexity of the Removal

If the technical complexity of a removal operation exceeds the ability of the primary APE to perform the operation, it may request DNR assume responsibility for the removal. Factors adding to the technical complexity of a removal include, but are not limited to, complex permitting, sensitive environmental conditions, coordination between multiple governmental entities and agencies, large quantities of hazardous materials, and complex legal considerations.

3. Availability of Funds

When considering whether or not to assume primary responsibility for the removal of a vessel when requested to do so by another APE, Lee County will consider if grant funds or other funds are available for reimbursement of project costs. In the case where grant funds are not available but can be secured through an assurance of future funds, Lee County may choose to accept primary responsibility for the removal of the vessel.

4. Property Ownership

DNR will take into consideration whether a public or private entity owns the aquatic lands where the vessel is located. Ownership will be considered to ensure that grant funds and the resources of Lee County are committed to providing the maximum benefit possible to the public.

5. Town and Cities

The role of municipalities in Lee County with jurisdiction over aquatic lands in the derelict vessel removal program is that of an APE. They may use their own assets or contract with other entities to effect marine salvage operations. Such municipalities have a primary responsibility to remove derelict and abandoned vessels that are located in areas where they own, lease, or operate aquatic lands.

SECTION 5: VESSEL IDENTIFICATION AND REPORTING

A. Vessel Identification

To report a potential abandoned or derelict vessel, the reporting party should get the vessel name and identification number if there is one present, get a description of the vessel size (length and width), color, type, and try to identify what type of fuel the vessel uses to determine whether or not there are any hazardous materials present. Describe the general location of the vessel (including, when possible, the GPS coordinates and photos), the date, approximate depth of water, and the ownership of the property the vessel is located on, if known. The reporting party should write down any additional comments or features that will help describe the site or provide further information, to the extent possible without compromising their health or safety. **(See attached Exhibit “A”.)**

B. Vessel Reporting

Anyone may report a vessel to the Program. Derelict vessel reporting forms (see Exhibit A) may be obtained from Lee County Division of Natural Resources. Once the report is received, an identification number will be given to that reporting form, and a prioritization number will be given to the vessel based on the information that is reported. Section 6 below describes the Funding Prioritization Criteria.

SECTION 6: REMOVAL PRIORITIZATION

A. Purpose

The priority for use of the derelict vessel removal, funded in part by grant funds from the West Coast Inland Navigation District (“WCIND”) is separated into three (3) categories representing the vessel’s risk to safe navigation, human health, and/or to the environment. The criteria listed below are intended to assign each abandoned or derelict vessel a general priority, but do not necessarily determine the order in which vessels are removed.

B. Types of Vessels

Priority 1

A Priority 1 Vessel is any vessel considered to currently be a hazard to either navigation, human health, or to the environment. Priority 1 vessels pose a significant risk if no action is taken. If a vessel is currently considered a hazard and the owner is not able or is unwilling to take responsibility for the vessel, Lee County, through its Division of Natural Resources will coordinate a potential removal plan.

Priority 2

Priority 2 vessels are those vessels that pose an imminent threat of becoming a hazard to either navigation, human health, or to the environment. If a vessel is an imminent threat of becoming a hazard and the owner is not able or is unwilling to take responsibility for the vessel, Lee County, through its Division of Natural Resources will coordinate a potential removal plan.

Priority 3

A Priority 3 vessel is any vessel that meets the criteria of being abandoned or derelict and is going through the legal process for removal and destruction, but does not currently pose a significant

risk to navigation, human health, or to the environment. Removal procedures for these vessels will be scheduled by Lee County, through its Division of Natural Resources in a manner that is most convenient and cost effective.

SECTION 7: REMOVAL PROCEDURE

A. Funding

In the event that funding is not available to assist in funding a removal project, the APEs or other local governmental entities requesting that Lee County remove a derelict vessel that is under its jurisdiction will be required to provide the County with written assurances that funding is available to reimburse Lee County for the removal project.

B. Contracts

When assuring funds for a particular removal project is appropriate, given the balance of the funds and the details of the proposed action, the applicant may be required to enter into a contract with Lee County. The contract would assure that the funds as estimated in the application are available and sufficient to fully reimburse Lee County.

C. Progress Payments

For removal operations with an assurance of funds and a total reimbursement eligible cost over \$50,000, progress payments may be requested by Lee County during the removal operations for completed work.

D. Obtaining Custody of a Vessel

Prior to exercising its removal authority, the APE or DNR will attempt to contact the Responsible Party and provide notice to putative owners and the public in the following forms:

1. Mailed notice by certified mail, return receipt requested, of its intent to obtain custody, at least five (5) days prior to taking custody, to the last known address of the previous owner and to any lien holder. Notice shall be in the format described in attached **Exhibit "B"**.
2. Posted notice of its intent clearly on the vessel, or if sunk the notice may be posted on its marker buoy, for at least five (5) days. Such notice shall be no less than 8 inches by 10 inches and should be sufficiently waterproof.

E. Notice Requirements

All notices (**Exhibit "B"**) sent, posted, or published must, at a minimum, explain:

1. The intent of the APE or DNR to take custody of the vessel;
2. The rights of the APE or DNR after taking custody of the vessel;
3. The financial liabilities that the owner may incur;
4. The rights of a Named or Noticed Party to request an administrative hearing before the Hearing Examiner to appeal or otherwise dispute the correctness of the determination of ownership and/or whether the vessel at issue is derelict or abandoned.

F. Costs

The owner of any abandoned or derelict vessel who, after receiving notice as described above, does not remove such property within the specified period, will be liable to the County, or any APE, for all costs of removal, storage, destruction and disposal of such property.

G. Rights of Appeal

Within twenty-one (21) days from the date of the posted or published notice, a Named or Noticed Party may request an administrative hearing before the Lee County Hearing Examiner to appeal or otherwise dispute the correctness of the determination of ownership and/or whether the vessel at issue is abandoned or derelict. (This process is not to be used to request additional time to remove or dispose of a vessel. Such a request must be made to DNR or the APE issuing the Notice of Abandoned or Derelict Vessel.)

The Named or Noticed Party must submit a written request to the Hearing Examiner with the information required by Lee County Administrative Code AC-7-10 (a copy of which is available online at www.leegov.com), with a copy to the Director, including details as to the correctness of the determination of ownership and/or whether the vessel at issue is abandoned or derelict.

The request must also include current contact information, e.g., a current mailing address, phone number (if available) and e-mail (if available), for notification of any resulting determination.

The failure of the Named or Noticed Party to timely make this request will be considered a waiver of the right for an administrative appeal to the Lee County Hearing Examiner pursuant to the process set forth herein and removal of a vessel may commence.

Upon the receipt of a complete request, the Hearing Examiner will set the matter for an administrative hearing to be held within thirty (30) days. Except as otherwise provided herein, the administrative hearing will be conducted as an appeal before the Hearing Examiner in accordance with the provisions contained in Lee County Administrative Code AC-2-6 that may be found online at www.leegov.com.

The Named or Noticed Party must appear at this hearing in person, or by legal counsel, and provide evidence and testimony, under oath, as to reason for disagreement with identification of the Named or Noticed Party being the owner of the vessel, and/or as to the determination of the vessel being derelict as defined under the terms of the County's regulations. If legal counsel, or any other person, appears on behalf of the Named or Noticed Party, statements as to any asserted fact are not testimony unless identified as being based on actual knowledge of the matters that are the subject of the statement and testified to under oath.

The hearing before the Hearing Examiner will be open to the public, but no public input will be taken.

The Hearing Examiner will issue a written determination within 14 days from the date of the hearing

Mediation is not an available alternative with respect to this action or proposed actions

An aggrieved party to the proceeding may appeal the order of the Hearing Examiner to the circuit court. Appeals will be limited to appellate review of the record created before the Hearing Examiner and may not be a hearing de novo. Appeals must be filed within 30 days of the execution of the Order appealed.

SECTION 8: REQUIREMENTS FOR REMOVAL

A. Custody

Custody of the vessel must be obtained prior to the removal operation unless the vessel is a Priority 1 vessel.

B. Use or Disposal of the Vessel

After taking custody of a vessel, or any of its parts, Lee County may use or dispose of the vessel in any appropriate and environmentally sound manner and in the public's best interests without further notice to any owners. However, preference will be given to uses that derive some monetary benefit from the vessel, either in whole, in part, or in scrap. If no value can be derived from the vessel, the County will give preference to the least costly, environmentally sound, reasonable disposal option. The vessel, and any parts thereof, will not be subject to Administrative Code 3-14, Policy on Tangible Personal Property Owned by Local Governments.

C. Auction

If the vessel, or any parts thereof, is offered at auction, a minimum bid, a letter of credit, or both will be required. Vessels, or parts thereof, can be auctioned off through any appropriate process, such as the annual County auction or online auctioning houses such as Ebay, and the resulting funds will be deposited into a County account specific to abandoned and/or derelict vessel removal. All parts will be inventoried and documented prior to sale and the written inventory will be approved by the Natural Resources Division Director prior to the parts being offered at auction. The County's Code of Ethics, Section 206, prohibits any employee involved in the auction process to bid on any of the vessels or their parts.

D. Proceeds of Sale

The proceeds derived from the sale of the vessel, or any of its parts, will be deposited in an account for the specific purpose of offsetting the costs pertaining to future abandoned vessels. A Budget Amendment will be performed no less than once per Fiscal Year to allow funds that have accrued to be utilized for payment of removal and disposition costs of future abandoned vessels. Financial records of each transaction will be maintained by the Division of Natural Resources.

E. Actions to Prevent Future Abandonment

In order to discourage future abandonment of a vessel that has been removed and sold at auction, the County will set a minimum bid and/or require a letter of credit from the entity purchasing the vessel.

SECTION 9: REIMBURSEMENT

A. Reimbursement by Vessel Owner

The owner of an abandoned or derelict vessel may be held responsible for reimbursing the County for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel. These costs include, but are not limited to, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. Reimbursement for costs may be sought from an owner who is identified subsequent to the vessel's removal and disposal.

B. Actions to Recover Reimbursement from Vessel Owner

If the full amount of all costs due to the County is not paid within thirty (30) days after first notifying the responsible parties of the amounts owed, the County may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorney's fees.

C. Revocation of Boat Registration Privileges

In the case of an abandoned or derelict vessel, any person who neglects or refuses to pay such amount owed to Lee County for removal will not be entitled to be issued a Certificate of Registration for any other vessel or motor vehicle until such costs have been paid in full. In accordance with the provisions contained in Fla. Stat. §705.103(4), Lee County or an APE will supply the DHSMV with a list of persons whose vessel and vehicle registration privileges have been revoked for failure to pay costs associated with abandoned or derelict vessel removal

NOTE: Attached Exhibits "A" and "B" have been replaced in their entirety.

Exhibit "A"

Complete and return this form to (insert appropriate entity name – use or identify one):

Lee County Division of Natural Resources Derelict Vessel Removal Program, Marine Services 1500 Monroe Street Fort Myers, Florida 33901
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or

Name of Authorized Public Entity Department or Division (if applicable) Street Address City/Town / State / Zip Code Phone Number E-Mail Address
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Instructions: Please enter as much of the information below as possible, and attach photos (when available). If information is estimated, please indicate that. **Items marked with an asterisk are required to be filled in.**

DERELICT / ABANDONED VESSEL INFORMATION		
* Today's date:	* Date sighted:	Date of incident:
* Reported by: * Phone number:		
* Address:		
* General location:		
Latitude:	Longitude:	Water Depth:
* Type of hazard (check all that apply): Navigation <input type="checkbox"/> ; Human health <input type="checkbox"/> ; Environmental <input type="checkbox"/> ; Aesthetic <input type="checkbox"/> ; Other <input type="checkbox"/>		
Vessel name:	Identification number:	
Length: feet	Beam (width): feet	Gross tonnage:
Hull type (wood, fiberglass, etc.):	Propulsion (Power, sail, other):	Type of fuel (gas, diesel):
Estimated fuel capacity of all tanks on board:	Estimated fuel on board when the vessel sank: (gallons)	
Other hazardous materials on board (e.g. hydraulic fluid, propane, oil) and estimated amounts:		
Vessel is located on: State-owned aquatic land <input type="checkbox"/> ; DNR leasehold <input type="checkbox"/> (Type); Private land <input type="checkbox"/> ; Other		
What government agencies have responded to this incident? <i>(Include copies of all incident reports)</i>	Summary of actions by other government agencies:	
Additional comments:		

EXHIBIT "B"

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY

(Min. 8 inches by 10 inches and sufficiently weatherproofed.)

By (Insert appropriate entity name – use or identify one appearing below.)

Lee County
Division of Natural Resources
Derelict Vessel Removal Program,
Marine Services
1500 Monroe Street, 3rd Floor
Fort Myers, Florida 33901
Telephone: 239-479-8109

or

Name of Authorized Public Entity
Department or Division (if applicable)
Street Address
City / Town / State / Zip Code
Phone Number

This property, to wit (description of article): _____

is unlawfully upon public property known as (description of location): _____

This property must be removed within 5 days from the date set forth below; otherwise, it will be removed and disposed of pursuant to Fla. Stat. §705.103 and Lee County Administrative Code AC- 7-10. The owner will be liable for the costs of removal, storage, disposal and publication of notice. Failure to pay costs may result in revocation of future boat registration and motor vehicle privileges.

Dated: _____

Signed: _____

Typed/printed name & title

NOTICE: Within twenty-one (21) days from the date of this posted or published notice, a Named or Noticed Party may request an administrative hearing before the Lee County Hearing Examiner to appeal or otherwise dispute the correctness of the determination of ownership and/or whether the vessel at issue is abandoned or derelict. (This process is not to be used to request additional time to remove or dispose of a vessel. Such a request must be made to DNR or the APE issuing the Notice of Abandoned or Derelict Vessel.)

The Named or Noticed Party must submit a written request to the Hearing Examiner with the information required by Lee County Administrative Code AC-7-10 (a copy of which is available online at www.leegov.com), with a copy to the Director, including details as to the correctness of the determination of ownership and/or whether the vessel at issue is abandoned or derelict.

The request must also include current contact information, e.g., a current mailing address, phone number (if available) and e-mail (if available), for notification of any resulting determination.

The failure of the Named or Noticed Party to timely make this request will be considered a waiver of the right for an administrative appeal to the Lee County Hearing Examiner pursuant to the process set forth in Lee County Administrative Code AC-7-10, and removal of a vessel may commence.