

**OREGON STATE MARINE BOARD
POLICY AND PROCEDURES**

SUBJECT: Abandoned Vessel Program and Fund

POLICY NO: 04-01

AUTHORITY: Oregon Law 2003, Chapter 693; ORS 830.140; ORS 830.907 to 830.927;
ORS 98.245

APPROVED BY: _____
Board Chair

EFFECTIVE DATE: April 15, 2004

I. Definitions

For the purpose of this policy the following definitions apply:

- (1) "Boat" means every description of watercraft used or capable of being used as a means of transportation on the water, but does not include aircraft equipped to land on water, boathouses, floating homes, air mattresses, beach toys or single inner tubes. ORS 830.700.
- (2) "Boathouse" means a covered structure on floats or piles used for the protected moorage of boats. ORS 830.700.
- (3) "Floating home," means a moored structure that is secured to a pier or pilings and is used primarily as a domicile and not a boat. ORS 830.700.
- (4) "Established or attended moorage" means a place where a boat, floating home or boathouse is attached to a pier, piling or marina in such a way as to be secure. Oregon Law 2003, Chapter 693.
- (5) "Removing authority," means a sheriff's office, municipal police department, state police office or law enforcement agency created by intergovernmental agreement or a port as defined in ORS 777.005 or 778.005.
- (6) "Owner" means a person or persons who have a property interest other than a security interest in a boat, floating home or boathouse and the right of use or possession of the boat, floating house or boathouse, but does not include lessee. ORS 830.700.
- (7) "Security interest" means an interest reserved or created by agreement, which secures payment, or performance of an obligation as more particularly defined in ORS 71.2010 (37). ORS 830.700.
- (8) "Agency" means the Marine Board office and staff including the Director, but not necessarily the appointed members of the Board.
- (9) "Removal" means the act of removing and cleaning up an abandoned boat, floating home, or boathouse.

II. Background

The 72nd Oregon Legislative Assembly enacted HB 3628, which amended Oregon's Abandoned Vessel statutes (ORS 830.907 to 830.927 and 98.245). The amendment (Oregon Law 2003, Chapter 693) allows the Oregon State Marine Board to pay for the costs of removing and cleaning up abandoned boats, floating homes and boathouses. The law limits the amount of money the Agency can use in a biennium and restricts use of the funds to specified criteria.

III. Purpose

The purpose of these policies and procedures is to provide removing authorities and Agency staff with a description of how the provisions of the new law will be carried out.

IV. Key Provisions

HB 3628 contains several provisions, which help to define the parameters for the use of Abandoned Vessel Funds. These provisions amend existing Marine Board statutes by:

- authorizing the Agency to use funds to pay a "removing authority" such as a port or law enforcement agency for up to 75% of the cost of removal and cleanup of an abandoned boat of less than 200 gross tons, and abandoned floating home or boathouse, if the removing authority is unsuccessful in collecting reimbursement from an owner or owner's insurance company for removal and cleanup expenses, including salvage, towing, storage or disposal;
- authorizing the Agency to use funds to cover agency expenses associated with implementing the program, but limited to the cost of removal and cleanup of an abandoned boat of less than 200 gross tons, and abandoned floating homes or boathouses;
- redefining "law enforcement agency" as "removing authority" and adding ports as a removing authority;
- specifying that a qualifying abandoned boat, floating home or boathouse must be located in the water and pose an environmental threat or safety hazard to navigation;
- limiting the amount of funds the Agency may use for removal and cleanup to \$150,000 per biennium.

V. Policies

It is the policy of the Marine Board that The Abandoned Boat Removal and Cleanup Sub account will be referred to as the Abandoned Vessel Fund.

It is the policy of the Marine Board that the administrative and fiscal activities of the Agency related to HB 3628 and ORS 830.907 to 830.927 and 98.245 will be referred to as the Abandoned Vessel Program.

It is the policy of the Marine Board that responsibility for the day-to-day administration of the Abandoned Vessel Program and the Abandoned Vessel Fund is hereby delegated to the Director, the Director's designee, and through them the staff of the Agency.

It is a policy of the Marine Board that, in addition to the limitations stated in HB 3620, removing authorities are only eligible to receive reimbursements for expenses directly related to a removal and cleanup. Indirect costs such as overhead and administration not specifically related to a removal and cleanup and are not eligible for reimbursement.

It is the policy of the Marine Board to avoid duplication and overlap with other agencies and governments, particularly the U.S. Coast Guard, U.S. Army Corps of Engineers, the National Oceanic and Atmospheric Administration and the Oregon Department of Environmental Quality and similar programs administered by the State of Washington.

It is the policy of the Marine Board to rely on removing authorities to accomplish the removal and cleanup of abandoned boats and that the Agency will take direct responsibility for the removal and cleanup of abandoned vessel, floating home or boathouse only as a last resort.

VI. Limitations

By law, each of the following criteria must apply before moneys from the Abandoned Vessel Fund can be used to pay for the costs to remove an abandoned vessel and for associated cleanup.

- The abandoned vessel, floating home or boathouse must be physically located in the water. Legislative intent suggests that no portion of the boat should be in physical contact with lands above ordinary high water.
- The abandoned vessel, floating home or boathouse must pose an environmental threat or a safety hazard to navigation.
- The abandoned vessel must be less than 200 gross tons.
- The Board or the removing authority must be unsuccessful in collecting reimbursement from the owner or the owner's insurance for the removal of the abandoned vessel, floating home or boathouse and cleanup expenses.

These criteria essentially limit the Abandoned Vessel Program to a reimbursement program. In addition, removing authorities that are eligible to receive reimbursement - sheriff's office, municipal police department, state police office or law enforcement agency created by intergovernmental agreement or a port - can receive no more than 75% of eligible removal and cleanup costs from the Agency. Finally, the Agency can spend no more than \$150,000 per biennium for removal and cleanup costs.

In addition to the criteria listed above, the Marine Board determines that the following types of reimbursements or payments are not eligible under the Abandoned Vessel Program:

- reimbursements or payments to remove vessels involved in accidents;

- reimbursements or payments to remove vessels, floating homes or boathouses that have been reported stolen or determined to be stolen;
- reimbursements or payments for tort claims or compensatory damages filed by third parties for lost or damaged personal or real property;
- reimbursements or payments for damages incurred to property belonging to a removing authority;
- reimbursements or payments for new equipment or machinery purchased by a removing authority to complete a removal or cleanup;
- reimbursements or payments for vessels, floating homes or houseboats removed by the U.S. Coast Guard or U.S. Army Corps of Engineers on federally navigable waterways or cleanups conducted by these agencies or the Oregon Department of Environmental Quality;
- reimbursements or payments for removal or cleanup costs about which the Agency had not received prior notification.

VI. Procedures

Removing authorities interested in participating in the Abandoned Vessel Program are required to adhere to the procedures listed in this document. In general, a successful project carried out in conjunction with the Abandoned Vessel Program will be closely coordinated with the Agency and other pertinent entities.

A. Notifying the Agency

A removing authority should notify the Agency as soon as possible when a vessel, floating home, or boathouse is discovered to be abandoned and appears to meet the criteria of the Abandoned Vessel Program. Unless immediate removal of the vessel is necessary to prevent imminent environmental damage or risk to public safety, the removing authority must provide the Agency with Notification prior to removing a vessel or taking it into custody. Notification should include the information listed below.

Location Information

- Name of Waterbody *
- County, city, port location.
- River mile and/or geographic reference
- GPS reading or closest latitude/longitude from charts or topographic maps
- Width and depth of waterway
- Upland ownership
- Photos of the vessel and vicinity

Vessel Information

- Size of vessel (length, width, height, gross tonnage) *
- Registration or identifying numbers
- Hull identification number
- Vessel name
- Type of vessel (commercial or recreational)

- Hull construction (steel, wood, fiberglass, aluminum)
- Type of propulsion (sail only, sail and power, power – propeller, screw, or jet)
- Type of engines (inboard, inboard/outboard, outboard)
- Type of fuel (gasoline, diesel, electric – battery)
- Status of vessel (floating, moored, grounded, listing)
- Integrity of vessel (sound, sinking, breaking up)

Initial Threat Assessment

- Type of threat (environmental threat and/or safety hazard to navigation) *
- Presence of fuel on board (type and estimate of volume)
- Presence of other hazardous materials (propane, oil, hydraulic fluids, battery acid, etc.)
- Threat to aquatic resources (fish, fish habitat, shellfish beds, aquaculture, crustaceans)
- Threat to listed species (federal and/or state)
- Threat to protected resources (national estuary, wildlife area, rocky shore, reef, etc.)
- Proximity to navigation channel
- Proximity to port facilities, public docks, ramps, marinas, moorages, fueling facilities
- Estimated volume of traffic in vicinity and proximity
- Threat of migration (likelihood the vessel will move and consequential damages)
- Potential threat from vandalism and/or arson and consequential damages
- Status of the threat (past, present, on-going or future damage)

Reporting Information

- Name, affiliation, and contact information of reporting individual *
- Other agencies contacted (USCG, USACE, NOAA, ODFW, ODEQ, ODSL, OSP, Port)

Recommended Action

- Description of the course of action the removing authority determines is warranted *
- Anticipated timing of the recommended action
- Other agencies the removing authority expects to involve and/or consult

*Items followed by an * are required at the time notification is made.*

Other information should be provided to the Agency as it becomes available. Notifications to the Agency can be initiated by telephone, fax or e-mail. The attached Abandoned Vessel Program Notification and Tracking Form can also be used and submitted as notification.

Once the Agency receives Notification, a reference number will be assigned and case file will be opened to track the disposition of the abandoned vessel, floating home, or boathouse. After initial review of the information provided in the Notification, Agency staff will identify additional information to be supplied and request it from the removing authority. The removing authority is responsible for providing the information requested by Agency staff.

A removing authority may take removal action, prior to providing the required notification, and remain eligible for possible reimbursement from the Abandoned Vessel Fund only in cases where an emergency exists and the threat to human life and health, the environment, or public and/or private property is immediate and significant. An official statement to this effect must accompany subsequent notification to the Agency.

B. Determining Initial Eligibility

Staff will review the information received as a part of the Notification and use it to determine whether or not the abandoned vessel, floating home, or boathouse appears to meet the criteria of the Abandoned Vessel Program. Staff may request and/or require verification of certain information from other authorities or sources before making an initial eligibility determination.

Staff may request and/or require the removing authority to substantiate the existence of an environmental threat or safety hazard to navigation. The removing authority may need to request an assessment by appropriate officials such as representative from the Oregon Department of Environmental Quality, Oregon Department of Fish & Wildlife, Oregon State Police, or county sheriff marine program.

Once staff review is complete, a letter of initial eligibility determination, signed by the Director or Director's designee, will be sent to the removing authority or reporting entity stating that the abandoned vessel appears to be eligible or does not appear to be eligible and the reason(s) it does not appear to be eligible.

If an abandoned vessel does not appear to meet program criteria, the removing authority may provide additional information to staff, request further review, or appeal to the Board. The determination of the Board in matters of eligibility is final and may not be appealed, except as otherwise provide by state law.

In no case will a determination of initial eligibility constitute an obligation on the part of the Agency or Board to commit funding from the Abandoned Vessel Fund to pay a removing authority for eligible costs associated with a removal and/or cleanup.

C. Identifying Owners

Whenever a removing authority suspects that a boat, floating home or boathouse has been abandoned, an effort must be made to identify and contact the owner. If the boat is registered in Oregon, the Agency should be contacted and provided with the registration numbers and decal information affixed to the bow of the boat. A description of the boat should also be provided to the Agency.

When registration numbers or decals are not present or visible, a hull identification number (HIN) may need to be obtained and provided to help the Agency trace ownership. A HIN should be located in all cases, to cross-reference other identifying information. The ownership of documented vessels that are not registered in Oregon may need to be traced by contacting the U.S. Coast Guard.

If ownership information is available in the Agency's data files, the results will be communicated to the removing authority. At the same time, Agency staff will consult with the Law Enforcement Database System (LEDS) to determine if the boat has been reported as stolen. If the boat has been reported stolen, removal will not be eligible under the Abandoned Vessel Program and the removing authority should follow established procedures relative to stolen property.

Floating homes and boathouses are required to be titled in Oregon. An identifying license plate should be affixed to the structure. The removing authority should report this number

to the Agency. If no license plate is found, the moorage or marina operator should be contacted for ownership information. It may also be useful to contact the Division of State Lands if leased submerged and submersible lands or registered private docks are proximate to the abandoned floating home or boathouse. Upland landowners or residents might need to be contacted, as well, in case they have information relating to ownership of the abandoned floating home or boathouse.

D. Contacting the Owner and/or Insurer

When the owner of the abandoned vessel has been identified, it is the responsibility of the removing authority to initiate contact with the owner in order to pursue voluntary removal or to recover any costs incurred by the removing authority for vessel removal and/or cleanup. Unless the abandoned boat, floating home, or boathouse constitutes a hazard or obstruction to others using the waterway (as provided in ORS 830.914) or the abandoned boat has no registration or identifying numbers, the removing authority must attempt to contact owners before taking it into custody.

Initial contact with owners may be attempted by mail, phone or other appropriate means. Formal contact should be made by certified mail using the most recent valid mailing address. If available telephone numbers or addresses are not valid, the removing authority should attempt to locate current valid information. When all attempts to contact owners are not successful the removing authority must provide notice as required in ORS 830.917 before taking custody of a vessel, floating home, or boathouse. In addition, if the contact with the owner does not result in the reasonable promise of voluntary removal and the removing authority decides to proceed with removal, the notice requirements in ORS 830.917 must be followed.

When contacting the owner, the removing authority should request the owner to supply the name of their insurance company and any pertinent coverage and policy information. This may include homeowners or vehicle insurance in case a rider covering a vessel, floating home, or boathouse exists. The owner should also be asked to supply pertinent information about any lien holders or others having a security interest in the vessel, floating home or boathouse.

The removing authority should document attempts to contact owners, including the dates, times, and means of contact as well as the results. A written compilation listing all of the contacts made or attempted with owners and the results must be provided to the Agency. Information documenting the notice procedures followed by the removing authority and the results of any hearings and determinations reached must also be provided to the Agency.

E. Consulting with and Reporting to Other Responsible Authorities

Whenever a removing authority determines that a boat, floating home, or boathouse appears to be abandoned and that removal is necessary or advisable, all responsible authorities should be contacted. Contact should be made prior to or during removal unless immediate removal is conducted pursuant to ORS 830.914. Which authorities need to be contacted varies according to the location of the abandoned vessel, floating home, or boathouse and its circumstances. Authorities to consider are listed below.

U.S. Coast Guard (USCG). The U.S. Coast Guard is the designated responder when an abandoned vessel, floating home, or boathouse creates a substantial pollution threat, a significant threat to public safety or health, or poses a future threat on federally navigable waterways. The Coast Guard may also have authorities or responsibilities under the Abandoned Barge Act of 1992 and other federal laws. Typically, the Coast Guard contracts for the removal of petroleum and other hazardous materials. The costs of removing hazardous materials from the abandoned vessel are covered by the Oil Spill Liability Trust Fund (OSLTF). Costs of removing the vessel, however, are not covered by OSLTF. The Coast Guard maintains jurisdiction over the abandoned vessel until environmental risks and navigational hazards are abated. Whenever a boat, floating home, or boathouse is abandoned on federally navigable waters, the U.S. Coast Guard must be consulted to determine whether they have an interest or jurisdiction over the vessel or its removal. The Captain of the Port is the appropriate point of contact.

U.S. Army Corps of Engineers (USACE). The United States Army Corps of Engineers (USACE) and the United States Coast Guard (USCG) have authority for the removal of vessels and other hazards to navigation from the waterways of the United States. In general, the USCG is the primary agency that will identify and remove a hazard to navigation; however, the USCG may ask the USACE for assistance. The USCG or the USACE may remove the hazard at the owner's expense.

Authority for removal of hazards to navigation by the U.S. Army Corps of Engineers is referenced in Sections 15-20 of the River and Harbor Act of 1899. Guidelines for coordination, removal of hazards to navigation, and cost recovery between the United States Coast Guard and the United States Army Corps of Engineers are found in the following:

- 33 USC 409, 411-415
- 33 CFR 245 Removal of Wrecks and Other Obstructions
- 33 CFR 64 Marking of Sunken Obstructions
- EP 1130-2-520 Project Operation, Navigation and Dredging Operations, Guidance and Procedures
- ER 1130-2-520 Project Operation, Navigation and Dredging Operations and Maintenance Policies

To contact the Portland District regarding Hazards to Navigation send an email with the subject "Hazards to Navigation" to: CENWP-OP-N.

Local port districts, city, county, and state agencies may also take legal action against the owner for removal of a hazard to navigation within their jurisdiction. If the abandoned vessel does not impinge on a federal navigation channel, removal may be allowed by other parties under the terms of a National General Permit and no additional permit from the Corps would be required. The District Engineer and Division offices are appropriate points of contact.

U.S. Environmental Protection Agency (EPA). Whenever a boat, floating home, or boathouse is abandoned on federally navigable waters the U.S. Environmental Protection Agency should be consulted to determine whether they have an interest or jurisdiction over the vessel or its removal. In general, under the Oil Pollution Act of 1990 EPA is concerned whenever a spill violates water quality standards, causes a film or sheen on surface waters or shorelines, or results in underwater sludge or emulsion deposits. The National Response Center at (800) 424-8802 and the Regional EPA Administrator are appropriate points of contact.

National Oceanic and Atmospheric Administration (NOAA). Whenever a boat, floating home, or boathouse is abandoned on federally navigable waters the National Oceanic and Atmospheric Administration should be consulted to determine whether they have an interest or jurisdiction over the vessel or its removal. In general, NOAA has authorities relating to water quality, marine mammals, anadromous fish, endangered species, commercial and recreational fisheries, and national estuaries. The Office of Response and Restoration (NOAA OR&R) at 206-526-6317 is an initial point of contact.

Oregon Department of Environmental Quality (DEQ). DEQ is responsible for protecting and enhancing Oregon's water and air quality, for cleaning up spills and releases of hazardous materials, and for managing the proper disposal of hazardous and solid wastes. All spills of oil into the waters of the state must be reported to DEQ. The Oregon Emergency Response System (OERS) at 1-800-424-0311 is the appropriate point of contact.

Oregon Department of Fish & Wildlife (ODFW). The Oregon Department of Fish & Wildlife is responsible for protecting and enhancing Oregon's fish and wildlife species. ODFW staff can advise removing agencies on actual or potential threats to fish and wildlife and fish and wildlife habitat posed by an abandoned vessel, floating home, or boathouse and/or activities associated with its removal. The regional and/or local office of ODFW are the appropriate points of contact.

Oregon State Police (OSP). Officers in OSP's Fish & Wildlife Division ensure compliance with the laws and regulations that protect and enhance the long-term health and equitable utilization of Oregon's fish and wildlife resources and the habitats upon which they depend. These officers possess patrol boats and can assist with assessments of impacts on navigation created by abandoned vessels, floating homes, and boathouses. The Regional OSP Headquarters or "911" are appropriate points of contact for Fish & Wildlife officers. OSP also houses the Oregon Emergency Response System (OERS). OERS is the primary point of contact by which any public entity provides the state notification of an emergency or disaster, or requests access to state or federal resources. 1-800-424-0311 is the appropriate point of contact for OERS.

Oregon Department of State Lands (DSL). DSL manages the state's submerged and submersible land under navigable rivers, lakes, estuaries, and the Territorial Sea to maintain fisheries, commerce, recreation and navigation. Whenever a boat, floating home, or boathouse is abandoned on state-owned waterways, DSL must be consulted as soon as possible before any removal efforts are initiated. This will enable the removing authority to obtain the appropriate proprietary authorizations from DSL. The Department also has jurisdiction over removals and fills in state waters. Depending on the circumstances and location, removal of an abandoned vessel may require a removal-fill permit. The Department also manages Oregon's Unclaimed Property Program (UPP). If the removing authority determines that a vessel has been abandoned due to the death of the owner and no claim is made on the property, DSL may become the executor of the estate and must hold the vessel in trust for the heirs. The removing authority must notify DSL as soon as possible in these instances. DSL also manages leases for log storage, marinas and commercial or marine industrial facilities and registers private docks. The Department may be able to provide assistance in identifying owners or lessees of waterfront property where vessels, floating homes, and boathouses have been abandoned. Department offices in Salem (503-378-3805) or the Eastern Region office (541-388-6112) in Bend are appropriate contact points.

County Sheriff's Marine Patrol. The Marine Board contracts with sheriffs in 31 counties throughout the state for marine patrol services, including the enforcement of state boating laws and other marine related activities. Marine officers are familiar with local waterways and can provide assistance in determining the impacts on navigation created by abandoned vessels, floating homes, and boathouses. County sheriffs also possess broad authority for public safety. Local sheriff's offices or "911" where it is available are appropriate points of contact.

Port District. Where appropriate, local port officials should be consulted when vessels are abandoned where they may impact commercial or recreational navigation or facilities related to a public port. Ports are both eligible removing authorities and can provide expertise on navigation impairment and may be able to help identify ownership of abandoned vessels, floating homes, or boathouses. The office of the local port is the appropriate point of contact.

It is the responsibility of the removing authority to consult with the appropriate responsible entities. Agency staff may be able to assist in identifying what agencies are appropriate for the circumstance. The removing authority must document contacts made with agencies, the assistance, direction and/or advice provided and the resulting actions taken, if any. A written compilation listing all of the contacts made or attempted with responsible agencies and the results must be provided to the Agency. The appropriate portion of the attached Abandoned Vessel Program Notification and Tracking Form can also be used for this purpose.

F. Preparing a Written Proposal and Estimate of Costs

Except as provided for in ORS 830.914, a removing authority participating in the Abandoned Vessel Program must prepare a written description of the proposed method and timing of removal. The proposal should consider and incorporate, whenever possible, the results of consultations with other responsible agencies and any requirements and recommendations. A description of the amount and type of in-house and/or contract equipment and labor needed to accomplish the removal should be included in the proposal, along with an estimate of the total cost of removal and cleanup.

Cost categories and amounts for which the removing authority expects to request reimbursement from the Abandoned Vessel Fund must also be clearly indicated in the proposal. In addition, the proposal should include an estimate of any value or compensation the removing authority anticipates receiving from the owners of the abandoned vessel, floating home, or boathouse or from the ultimate disposition of the property.

The proposal does not need to be elaborate but should clearly explain how the removing authority intends to deal with the abandoned vessel, the principals to be involved, the timing and duration of the removal and disposition, and how much removal and cleanup is expected to cost. The complexity of the proposal depends largely on the complexity of the removal. This proposal must be submitted to the Agency before physical removal of a vessel is initiated, except in cases where an emergency exists and the threat to human life and health, the environment, or public and/or private property is immediate and significant.

The appropriate portion of the attached Abandoned Vessel Program Notification and Tracking Form can be used for required proposal and estimate of costs.

G. Entering into a Project Agreement

The proposal and estimate of costs submitted by a removing authority will generally serve as the basis of an Abandoned Vessel Program Project Agreement. Agency staff will review the proposal and cost estimates prepared by the removing authority to determine whether or to what extent a proposed removal qualifies for reimbursement under these policies and procedures. If additional information is needed by staff, it is the responsibility of the removing authority to provide the requested information.

Once Agency staff determines that a removal appears to be qualified and the amount of funds that a removing authority may be eligible to receive, a Project Agreement will be prepared. A Project Agreement is essentially an Intergovernmental Agreement. The Agreement will be signed by the Director and transmitted to the removing authority for approval by the governing body of the removing authority or its designated representative.

The Agreement will contain a brief description of the project, the amount of reimbursement the removing authority may be eligible to receive, and assurances that the removing authority agrees to comply with in carrying out the removal and cleanup. By reference, the agreement will also include the proposal and estimate of costs submitted by the removing authority. A sample Abandoned Vessel Project Agreement is attached.

The Project Agreement sets the maximum amount the Agency will reimburse a removing authority for the removal and cleanup of a qualified abandoned vessel, floating home, or boathouse. This amount is determined not only by the estimate of costs provided by the removing authority but also by the terms of these policies and procedures, the overall availability of money in the Abandoned Vessel Fund, funds committed to other removals through separate Project Agreements, funds for anticipated removals, and designated reserves.

However, the Marine Board also recognizes that the actual costs associated with the removal and cleanup may vary from the estimate provided by the removing authority. A removing authority may request and additional funds may be authorized by the Director to cover eligible costs above the amount contained in the Project Agreement. The removing authority must request additional funds in writing and include the justification for the request and any new documentation or information supporting the request.

Staff will review the request to determine whether the costs are legitimate and reasonable and if sufficient funds remain in the Abandoned Vessel Fund considering all anticipated needs, known commitments, and reserves. If the Director determines that additional funds can be provided to a removing authority an amendment to the Project Agreement will be signed by the Director and transmitted to the removing authority for signature by its authorized representative.

If the Director denies the request for additional funds, the removing authority may appeal the decision to the Board. An appeal must be submitted in writing and addressed to the Director. The appeal will be scheduled for the next regularly scheduled quarterly meeting of the Board. The decision of the Board is final and may not be appealed, except as otherwise provide by state law.

H. Removing an Abandoned Boat

In general, a removing authority participating in the Abandoned Vessel Program will remove an abandoned vessel, floating home, or boathouse under one of the following circumstances:

- when a boat, floating home or boathouse is disabled, abandoned or left unattended on the waters of this state in such a location as to constitute a hazard or obstruction to other boats, floating homes or boathouses using the waterway, a removing authority may take immediate custody and removal action (ORS 830.914); or
- when there is no identification number, registration number or other markings through which the Agency or Coast Guard can identify the owner of the abandoned boat, floating home, or boathouse, a removing authority may take custody and remove an abandoned boat without a hearing but after consulting with responsible agencies (ORS 830.922); or
- upon completion of the notice requirements and hearing process and after consulting with responsible agencies, a removing authority may take custody and remove an abandoned boat, floating home or boathouse (ORS 830.912).

Removing an abandoned vessel, floating home, or boathouse may be as straightforward as towing it to a suitable location and securing it for future disposition. In contrast, removal may involve extensive salvage and cleanup operations. Each situation will be unique.

Removal may be accomplished by the removing authority using their own in-house equipment and labor, by working cooperatively with another public entity using their equipment or staff, by contracting with a private individual or company with the equipment, staff, and expertise to perform the removal, or a combination of these approaches.

There is no prescribed manner of removal under the Abandoned Vessel Program. However, removing authorities are encouraged to accomplish removal and cleanup in as efficient and direct manner as practicable. When awarding contracts, removing authorities are expected to follow all applicable local and state laws, ordinances, and rules with respect to contracting for services. When cooperating with another public entity to accomplish removal, a written agreement between the two entities must be executed.

In rare circumstances, dismantling or *in situ* demolition of an abandoned vessel, floating home, or boathouse may be necessary and advisable when removal cannot be accomplished by leaving the property in tact. In these cases, removing authorities must consult with responsible authorities, comply with applicable laws, and obtain any necessary permits. Demolition may require more extensive cleanups. The Agency must be notified before any demolition action is taken.

Following removal, the removing authority must provide the Agency with a written description of the actions taken and methods used to remove the abandoned vessel, floating home, or boathouse. This post-action report can be as simple as amending the proposal submitted to the Agency prior to removal. At the same time, the removing authority should provide an updated statement of costs incurred to date. If additional cleanup, storage, or disposition costs are anticipated they should be estimated and noted in the post-action report to the Agency. Removing authorities are encouraged to keep a photographic record of the removal and provide copies of photographs to the Agency.

I. Disposing of Abandoned Vessels, Floating Homes, and Boathouses

Whenever a removing authority seeks to dispose of an abandoned vessel, floating home, or boathouse held in custody, the procedures required in ORS 98.245 must be followed. The Marine Board expects the removing authority to make a good-faith attempt to obtain the highest value for the abandoned vessel, floating home, or boathouse in order to offset costs of removal and cleanup.

If the property can serve a functional purpose for the removing authority or another government body, the Agency should be contacted to discuss the alternative of retaining the property. A value may be mutually agreed to between the removing authority and the Agency, which could reduce the amount of reimbursement the removing authority can receive from the Abandoned Vessel Fund.

The removing authority must provide the Agency with a copy of the inventory required in ORS 98.245(2)(a) and notice required in ORS 98.245(2)(b). Finally, the removing authority must report to the Agency the ultimate disposition of the abandoned vessel, floating home, or boathouse and the amount of compensation received.

If a removing authority demolishes the abandoned vessel, floating home, or boathouse and determines that the remnant portions of the abandoned vessel, floating home, or boathouse have no residual value, a statement to this effect must be included in the report.

J. Reporting

Communication between the removing authority and the Agency is essential. At a minimum, these Policies and Procedures require the removing authority to provide the following reports at the appropriate stages of the removal process:

- notification report;
- documentation of attempts to contact owners and the results;
- documentation of contacts made with responsible agencies and the results;
- written proposal describing the method and timing of removal and estimated costs;
- post-action report describing the removal and cleanup;
- documentation of disposition including the inventory required in ORS 98.245(2)(a) and notice required in ORS 98.245(2)(b), and;
- documentation of attempts to obtain reimbursement from owners or insurers.

K. Requesting Reimbursement for Removal and Cleanup Costs

Ultimately, the responsibility of paying the costs of removing an abandoned vessel, floating home, or boathouse and subsequent costs of cleanup lies with the owner of the abandoned property. The removing authority must aggressively seek to identify the owner and obtain reimbursement for any costs incurred in removing the property and any cleanup. By necessity, this may require filing appropriate legal or financial encumbrances against other property or assets of the owner as provided in State law. Secondly, if the removing authority determines that the owner of the abandoned property has insurance coverage or a surety bond, reimbursement should be pursued from the insurer.

Only after attempts to collect reimbursement from the owner of the abandoned vessel or the insurer have been exhausted and unsuccessful, can the removing authority seek reimbursement through the Abandoned Vessel Fund. Attempts by the removing authority to obtain reimbursement from the owner and insurer must be documented and submitted to the Agency. In cases where no owner can be identified or attempts to contact the owner are unsuccessful, the removing authority must confirm this in writing at the time reimbursement is requested.

Requests for reimbursements from the Abandoned Vessel Fund must be submitted to the Agency in writing on the removing authority's letterhead with the expressed approval of the governing body of the removing authority. Proof of approval may be in the form of a resolution, minutes of meeting when approval is given, or other official document. The expressed approval of the removing authority's governing body must affirm that the following basic eligibility requirements have been met:

1. The abandoned boat, floating home or boathouse was physically located in the water below ordinary high water;
2. The abandoned boat, floating home or boathouse posed an environmental threat or a safety hazard to navigation;
3. The abandoned boat is less than 200 gross tons, and;
4. The removing authority was unsuccessful in collecting reimbursement from the owner or the owner's insurance for the removal of the abandoned boat, floating home or boathouse and cleanup expenses.

Requests for reimbursement must include a summary statement listing the direct expenses and costs of removal and cleanup incurred by the removing authority. The statement must be accompanied by supporting documentation such as copies of contracts, invoices, payroll records, equipment logs, storage fees, etc. sufficient to substantiate the amount of reimbursement requested.

The removing authority cannot request reimbursement for indirect costs such as overhead or staff and equipment time not directly involved in the removal or cleanup. In addition, reimbursement requests cannot include costs associated with any factors listed above under section subtitled Limitations.

If removal is accomplished with assistance from another government entity and the removing authority anticipates requesting reimbursement from the Abandoned Vessel Fund for payments made to the other entity or to indirectly reimburse the other entity, the removal activities must be covered by a written agreement between the two entities. A signed copy of this agreement must be provided to the Agency. Documentation of the costs incurred by the other entity under the agreement must accompany the reimbursement request.

All documentation submitted should substantially corroborate the particulars contained in the Project Agreement and post-action report. The removing authority is also required to submit documentation substantiating the amount and source of any funds received as the result of disposition of the abandoned boat.

L. Staff Review, Final Statement, and Reimbursement

When the Agency receives a request from a removing authority for reimbursement from the Abandoned Vessel Fund, staff will review all information on file relating to the removal. If staff determines that additional information is needed to help substantiate the request, the removing authority will be notified by phone or in writing. The removing authority must designate a contact person who can provide information and answer questions about the request.

When all of the necessary information has been provided, staff will process the request. The amount of reimbursement paid to a removing authority from the Abandoned Vessel Fund will be based primarily on the Project Agreement. In the final analysis, the most a removing authority may receive from the Abandoned Vessel Fund is an amount equal to 75% of eligible direct removal and cleanup costs after deducting any partial reimbursements received from the owner or insurer of the abandoned vessel, floating home, or boathouse and/or any funds received as a result of the disposition of the property, up to a maximum of \$150,000.

Costs that are not adequately supported by the information submitted by the removing authority may be disallowed in whole or in part by staff. Similarly, costs that appear to be ineligible or excessive may also be disallowed in whole or in part. The removing authority may be contacted to supply additional supporting documentation, if available, when staff disallows costs.

In addition, because the Agency is constrained to \$150,000 in expenditures from the Abandoned Vessel Fund in a single biennium, reimbursements may be reduced in order to assure that a reserve is available for other known removals. In addition to any funds the Agency may reserve to assist with removals for which it has received notification, the Agency may hold up to an additional 20% of the Abandoned Vessel Fund in reserve for emergency removals. The 20% reserve would be held at least until the beginning of the third quarter of the final year of each biennium when it could be utilized for known removals.

After all necessary and available documentation has been provided, Agency staff will prepare a final written statement indicating the amount and basis of reimbursement the removing authority is eligible to receive from the Abandoned Vessel Fund. The statement may identify a portion of eligible reimbursements, which because of other removals or reservations may not be paid or may be deferred until the third quarter of the final year of the biennium.

If the removing authority agrees with the statement, an official acceptance letter agreeing to the amount and waiving any subsequent claims (other than identified deferrals) to reimbursements must be provided to the Agency. When this letter is received, Agency staff will process the reimbursement and obtain a warrant in the amount agreed to by the removing authority. Deferred reimbursements will be paid by the Agency by the end of the biennium in which the eligible removal was performed.

M. Disputing Final Statements and Appealing

If the removing authority disagrees with the final statement, a written request for review may be sent to the Director. The request should indicate the basis for the disagreement and

include any additional information supporting the removing authority's position. The Director may accept the request for further review or deny it in writing, stating the reasons for denial. After further review by staff, the Director may revise the original statement as appropriate and re-issue a revised statement or affirm the original statement.

A removing authority that disputes the Director's decision may formally appeal to the Board. An appeal must be in writing, detailing the disputed results and justifying the position of the removing authority. Appeals may be made by letter to the Director after which the appeal will be placed on the calendar of the next regular quarterly meeting of the Board. A removing authority appealing a final statement to the Board must be present at the Board meeting or the appeal will be denied. The decision of the Board is final and may not be appealed, except as otherwise provide by state law.