

Quileute
&
Derelict
Abandoned Vessel
Ordinance

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1. Definitions

The definitions in this section apply throughout this ordinance.

(1) "Abandoned vessel" means a 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 aquatic lands below or on which the vessel is located for either a period of more than thirty 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 subsection (1) only, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

(2) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the Quileute Tribe and lands owned by other public or private entities.

(3) "Derelict vessel" means the vessel's owner is known and can be located, and exerts control of a vessel that:

- (A) 1. Has been moored, anchored, or otherwise left in the waters of the Quileute Tribe and/or Quileute Tribe Marina;
- 2. Has been left on private property without authorization of the owner; or
- 3. Has been left for a period of seven consecutive days, and:
- (B) 1. Is sunk or in danger of sinking;
- 2. Is obstructing a waterway; or
- 3. Is endangering life or property.

(4) "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.

(5) "Ship" means every species of watercraft or other mobile artificial contrivance, powered or unpowered, intended to be used for transporting people or goods on water or for floating marine construction or repair and that exceeds two hundred feet in length.

(6) "Vessel" means watercraft, powered or unpowered, intended to be used for transporting people or goods on water or for floating marine construction or repair and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft, or any attached floats or debris.

2. Ordinance is not an exclusive remedy

This ordinance is not intended to limit or constrain the ability and authority of the Quileute Tribal Council to enact and enforce ordinances or other regulations relating to derelict and abandoned vessels, or to take any actions authorized by Tribal, Federal or State law in responding to derelict or abandoned vessels. This ordinance is also not intended to be the sole remedy available to Quileute Tribal Council against the owners of derelict and abandoned vessels.

3. Authority of the Quileute Tribal Council – Owner retains primary responsibility

(1) The Quileute Tribal Council has the authority, subject to the processes and limitations of this ordinance, 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 the Quileute Tribe. Disposal must be done in an environmentally sound manner and in accordance with all tribal, federal, state, and local laws.

- a. The Quileute Tribal Council has the authority to make the determination regarding whether a vessel is abandoned or derelict. The determination will be based on all evidence presented to them. This may include but is not limited to a statement from the Coast Guard, Quileute Natural Resources Department and/or the Quileute harbor master, any photos or other documentation pertaining to the vessel ownership, environmental impact and whether the vessel is in danger of sinking. The Quileute Tribal Council may delegate this authority. However, the Quileute Tribal Council will make the final determination regarding what to do with the vessel should it be deemed abandoned and/or derelict.

(2) The primary responsibility to remove a derelict or abandoned vessel belongs to the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is located.

(3) If the owner, operator or lessee is unwilling or unable to remove the derelict or abandoned vessel, they may authorize Quileute Tribal Council to do so voluntarily. Otherwise, the Quileute Tribal Council may take the necessary steps to obtain custody of the vessel for the purposes of moving or removing the vessel.

(4) The Quileute Tribal Council, in the good faith performance of the actions authorized under this ordinance, is not liable for civil damages resulting from any act or omission in the performance of the actions other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person whose assistance has been requested by the Quileute Tribal Council and who, in good faith, renders assistance or advice with respect to activities conducted pursuant to this ordinance, is not liable for civil damages resulting from any act or omission in the rendering of the assistance or advice, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

4. Obtaining custody of derelict or abandoned vessel

(1) Quileute Tribal Council may obtain custody of a derelict or abandoned vessel. To do so, the Quileute Tribal Council must:

(a) Mail or serve notice of intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the vessel in any tribal, state or with the federal government and to any lienholders or secured interests on record;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody; and

(2) All notices sent, served, posted, or published in accordance with this section must, at a minimum, explain the intent of the Quileute Tribal Council to take custody of the vessel, the rights of the Quileute Tribal Council after taking custody of the vessel, the procedures the owner must follow in order to avoid custody being taken, the procedures the owner must follow in order to reclaim possession after custody is taken by the Quileute Tribal Council, and the financial liabilities that the owner may incur.

(3)(a) Quileute Tribal Council may tow, beach, or otherwise take temporary possession of a vessel if the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel and if the vessel:

- (i) Is in immediate danger of sinking, breaking up, or blocking navigational channels; or

(ii) Poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination.

(b) The Quileute Tribal Council will file an emergency ex parte Motion to obtain custody of the vessel. The basis for taking temporary custody and removal of the vessel must be set out in the motion. The Quileute Tribal Council must provide notice to the owner along with a copy of the Motion and Approved order. The Quileute Tribal Court will set a hearing for disposal of the vessel and restitution. The hearing will be set for no sooner than five (5) days after the granting of temporary custody and removal order. If the owner fails to appear for the hearing, a default judgment in favor of the Quileute Tribal Council will be rendered allowing for disposal of the vessel and restitution.

5. Use or disposal of vessel

(1) After taking custody of a vessel and obtaining an order authorizing disposal, the Quileute Tribal Council may use or dispose of the vessel in any appropriate and environmentally sound manner without further notice to any owners but must give preference to uses that derive some monetary benefit from the vessel, either in whole or in scrap. If no value can be derived from the vessel, the Quileute Tribal Council must give preference to the least costly, environmentally sound, reasonable disposal option. Any monetary benefit will be used towards the removal costs, disposal costs and then past due Quileute Tribe Marina moorage fees.

(2) Proceeds derived from the sale of the vessel must first be applied to any administrative costs that are incurred by the Quileute Tribal Council during the notification procedures, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. If the proceeds derived from the vessel exceed all administrative costs, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel, the remaining moneys must be applied to satisfying any liens registered against the vessel and any outstanding Quileute Tribe Marina moorage fees.

(3) Any value derived from a vessel greater than all liens and costs incurred reverts to the owner.

6. Reimbursement for costs

(1) The owner of an abandoned or derelict vessel, or any person or entity that has incurred secondary liability for an abandoned or derelict vessel is responsible for reimbursing Quileute Tribal Council 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, all administrative costs incurred by the Quileute Tribal Council, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. Once Quileute Tribal Council has taken temporary possession of a vessel, they may require that all reasonable and auditable costs associated with the removal of the vessel be paid before the vessel is released to the owner.

(2) Reimbursement for costs may be sought from an owner, or any person or entity that has incurred secondary liability, who is identified subsequent to the vessel's removal and disposal.

(3) If the full amount of all costs due to the Quileute Tribal Council under this chapter is not paid to the Quileute Tribal Council within thirty (30) days after first notifying the responsible parties of the amounts owed, the Quileute Tribal Council may bring an action in the Quileute

Tribal Court or any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees.

7. Ordinance not exclusive

The rights granted by this ordinance are in addition to any other legal rights the Quileute Tribal Council may have to obtain title to, remove, recover, sell, or dispose of an abandoned or derelict vessel, and in no way does this ordinance alter those rights, or affect the priority of other liens on a vessel.

8. Derelict or Abandoned Vessel criminal penalties

(1) A person who causes a vessel to become abandoned or derelict upon aquatic lands is guilty of a misdemeanor.

(2) A person who intentionally, through action or inaction and without the appropriate tribal, state, local, or federal authorization, causes a vessel to sink, break up, or block a navigational channel upon aquatic lands is guilty of a misdemeanor.

9. Contesting the taking of temporary custody or possession of a vessel and/or contesting the restitution

(1)(a) An owner or lienholder seeking to contest Quileute Tribal Council's decision to take temporary possession or custody of a vessel under this chapter, or to contest the amount of restitution owed to Quileute Tribal Council under this chapter, may do so at the custody / restitution hearing set by the Quileute Tribal Court or other Court of competent jurisdiction.

10. Authority to board a vessel – Administrative search warrant

(1) An officer or employee of the Quileute Tribal Council, the Coast Guard or the department of ecology at the request of the Quileute Tribal Council, may, consistent with subsection (2) of this section, board any vessel at any reasonable time for the purpose of:

(a) Administering this ordinance, including identifying ownership of a vessel, assessing the structural integrity of a vessel; or

(b) mitigating a potential threat to health, safety, or the environment.

(2)(a) Prior to boarding any vessel under the authority of this section, an officer or employee of the Quileute Tribal Council must apply for and obtain an administrative search warrant in the Quileute Tribal Court. The court may issue an administrative search warrant where the court has reasonable cause to believe it is necessary.

11. Voluntary relinquishment of Vessel

(1) An owner of a vessel may choose to voluntarily relinquish a derelict or abandoned vessel to the Quileute Tribal Council. This does not dismiss the owner's financial obligations regarding the vessel unless agreed to by the Quileute Tribal Council.