

Public Hearing Summary for WAC 332-08 Proposed Rulemaking

The Aquatic Resources Division conducted three public hearings for vessel inspection criteria and procedures on Tuesday, March 25th in Mt. Vernon; Wednesday, March 26th in Vancouver; and Thursday, March 27th in Seattle. The following DNR staff was present at one or more of the hearings: Melissa Ferris, Lisa Randlette, Robin Hammill, Dennis Clark, Matt Niles, Derrick Toba, Toni Droscher, and Matt Goering. A total of nine people were in attendance and seven people testified. In addition, DNR received written and phone comments from six people who didn't attend the hearings.

Summary of Public Comments / DNR Responses:

Members of the public in attendance were generally in favor of requiring owners of older, larger vessels to be accountable for the condition of their vessels and were supportive of Washington State taking active management steps to minimize the presence of derelict vessels in public waters.

The attendees raised technical questions about the proposed vessel inspection criteria and how the Department of Natural Resources would enforce the proposed rule. Their questions included:

1. Are sales or transfers of federally-owned vessels covered by this rule?

(Practically speaking – No. The federal government has sovereign immunity and it has not waived that immunity in this circumstance. Because the federal government has not waived its immunity, the state could not pursue the federal government for secondary liability even if the law applied.)

2. Are sales or transfers of tribal-owned vessels on reservations covered by this rule?

(In some circumstances the rule may apply. Tribes have sovereign immunity and cannot be sued for secondary liability under the state law unless they waive immunity. Individual tribal members could be pursued for secondary liability if the sale / transfer of the vessel took place outside of Indian Country. Individual tribal sellers / transferors are not subject to state laws inside Indian Country, but have to abide by state laws outside of Indian Country. A non-tribal seller / transferor is subject to the state law if inside or outside Indian Country.)

3. Are sales or transfers of foreign-owned vessels covered by this rule?

(In some circumstances the rule may apply. Foreign sellers / transferors are beyond the reach of the state law if the sale of the vessel takes place outside the state. However, a foreign seller / transferor must abide by state law if selling their vessel within the state.

4. Are vessels sold at auction or other than private sales covered by this rule?

(Yes, whoever holds title to the vessel is required to meet the provisions of chapter 79.100.150 RCW and WAC 332-08 for a vessel longer than 65 feet and older than 40 years and is either: registered or required to be registered under chapter 88.02 RCW or listed or required to be listed under chapter 88.02 RCW.)

5. Many barges are not registered and don't need inspection if under 20 tons. Are these exempt from needing a vessel inspection prior to ownership transfer?

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(These barges are not exempt from the pre-transfer inspection requirement if they are required to be registered under chapter 88.02 RCW or to be listed under chapter 84.40 RCW.)

6. Could the death of a current owner place a burden of secondary liability on a previous owner?

(Yes. After the effective date of this rule, if the previous owner did not document the vessel inspection prior to sale or transfer of the vessel to the current owner, they may have secondary liability.)

7. Vessels being donated, sold, or transferred for restoration purposes should be exempt from inspection requirements. The expense of inspections may be a disincentive for the donor to contribute or sell.

(Comment noted. DNR does not have the discretion to exempt this type of proposed vessel use from the scope of the rulemaking, which was directed by the State legislature.)

8. Definitions of term ‘seaworthy’ signifies that the vessel is properly constructed, prepared, manned, equipped, and provided, for the voyage intended. Change rule wording to “suitability for its intended use.” And if not suitable, a marine surveyor notes what repairs would be required to put the vessel back into service.

(Comment noted. DNR will revise the rule language to reflect a more accurate wording.)

9. A professional marine surveyor does not estimate the cost of repairs.

(Comment noted. DNR will delete this portion of the vessel inspection rule or require such cost estimates be provided from a professional shipyard / boatyard operator).

10. Estimated cost to repair vessels won’t deter buyers of derelict vessels. The rule only lets previous owners ‘off the hook financially’.

(Comment noted.)

11. Insurance underwriters indemnify marine surveyors for their work. Will DNR indemnify the marine surveyor who produced the vessel inspection report or will they be implicated?

(While DNR will not seek secondary liability from the marine surveyors, it will not specifically indemnify them either.)

12. Definition of term ‘abandoned or derelict vessel’ needs to be specific in the proposed rule.

(These definitions are provided in RCW 79.100.010(1) and (5) and apply to the proposed rule.)

13. Add criteria to the proposed rule that vessels be hauled out for a complete bottom and underwater machinery inspection.

(This haul-out requirement was anticipated in the proposed rule and the wording will be revised to be more specific.)

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14. **The final pre-purchase – condition and value inspection report should reference compliance with applicable United State Code of Federal Regulations (CFR), US Coast Guard, American Boat and Yacht Council, and National Fire Protection Association standards.**

Comment noted. This determination of which standard to use for compliance is the responsibility of marine surveyors in preparing the inspection report, depending on the intended use of the vessel (or whatever criteria they currently use). This level of detail doesn't need to be specified in rule.

15. **A vessel survey is considered a 'snapshot' on the day of inspection. It is a standard practice within the marine surveyor community that if a significant amount of time has lapsed - normally more than a couple of weeks - another survey is in order.**

(Comment noted. DNR will consider reducing the amount of time a survey is acceptable from six months to no more than one month.)

16. **The proposed rule should include a provision that calculates an average cost per foot for all vessel moorage, care, and maintenance, combined with a multiplier for age and original cost. The estimated range of costs should be a financial minimum qualification for ownership transfer of vessel in the specific group the rule addresses (more than 65 feet in length / more than 40 years old).**

(Comment noted. It is beyond the scope of this rulemaking to specify or enforce any financial requirements or bonding for vessel owners.)

17. **Selling, gifting, or transferring ownership to someone not prepared to make the necessary repairs, as determined by the vessel inspection process, should qualify as abandonment by the seller.**

(Comment noted. It is beyond the scope of this rulemaking to specify or enforce any financial requirements or bonding for vessel owners.)

18. **The proposed rule should include a provision that applies the above-referenced financial qualification to existing vessel owners and provides a way for those people not financially able to voluntarily give up ownership in order to avoid abandonment and adverse environment impacts.**

(Comment noted. It is beyond the scope of this rulemaking to provide financial incentives for vessel owners of larger, older vessels.)

19. **Send vessel owners a copy of the vessel inspection rule requirements with the license or registration renewal.**

(Comment noted. This suggestion will be provided to the Washington State Departments of Licensing and Revenue for their consideration and potential implementation.)

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Public Rulemaking Hearing Attendees

Tuesday, March 25, 2014 / 6 – 7:30 PM / City Council Chambers, Mt. Vernon, WA

- **Andy Culbertson***, Culbertson Marine
- **Darrell Boyes***, marine surveyor
- **Roland Culbertson**

Wednesday, March 26, 2014 / 6 – 7:30 PM / Vancouver Community Library, Vancouver, WA

- **Eric Florip**, The Columbian newspaper
- **Robin Lerars***, Port of Grays Harbor, Westport Marina

Thursday, March 27, 2014 / 6 – 7:30 PM / Seattle Public Library - Beacon Hill Branch, Seattle, WA

- **Charles W. Solarek***, marine surveyor
- **Joe V. Peterson***, Historical Naval Ships Foundation
- **Dana Jacallen***, marine construction
- **Craig Bailey***, marine construction

Written and Phone Comments

- Mr. Allendson, vessel owner
- Bob Brooks, SunChaser Yachts / Blaine Marine Services
- Guy Hoppen, vessel owner
- Stephen A. Hulsizer, vessel owner
- Katie Krueger, Quileute Natural Resources
- Charlie Miller, marine surveyor

*Testified