

Update to the U.S. National Response Team's Abandoned Vessels Authorities and Best Practices Guidance

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Abstract

The U.S. National Response Team promulgated an interagency guidance document entitled “Abandoned Vessel Authorities and Best Practices Guidance” (AVG) in 2014 to address a myriad of questions that the Federal On-Scene Coordinators and broader response community tend to face when mitigating threats caused by abandoned or derelict vessels. This document compiles information surrounding existing laws, policies, and best practices to inform and advise responders without bogging them down in “legalese” or forcing them to search from document to document to find all the relevant information. In the aftermath of the 2017 Atlantic Hurricane Season and associated responses, the National Response Team tasked its Preparedness Committee to reopen the 2014 AVG to ensure the document addressed the challenges that were brought to light amid the responses. The Committee chartered a working group to systematically review and update this document and incorporate the latest pertinent policy changes, including those from Federal Emergency Management Agency to ensure that it most thoroughly addressed the gamut of issues a responder may come up against in the arena of abandoned (or derelict, or displaced) vessel management. The updated AVG was completed and approved by the NRT in 2020 and is posted to the [NRT website](#). Major updates include:

- Considerations for long-term storage and disposal;
- Clarification on foreign-flagged vessel nuances;
- Information for responders to consider regarding contaminants other than those covered under NCP/ ESF constructs (e.g. if typical response authorities do not cover a scenario, what options might the responder still leverage);

- An additional section addressing nuances of managing multiple vessel casualties at once, either due to a natural disaster or an act or omission from a third party; and
- Important differences between National Contingency Plan and Stafford Act funded/ organized responses.

This paper dives into the rationale for making changes, the benefits of additions made, the processes and methodologies for undertaking updates, and major elements of the AVG to provide a snapshot of the guidance it affords the reader.

INTRODUCTION

“The U.S. National Response Team (NRT) is an organization of 15 federal departments and agencies responsible for coordinating emergency preparedness and response to oil and hazardous substance pollution incidents. The Environment Protection Agency (EPA) and the U.S. Coast Guard (USCG) serve as Chair and Vice Chair, respectively. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) outlines the role of the NRT and Regional Response Teams (RRTs) (About NRT).”

In 2011 the NRT and RRTs identified a systematic problem with vessels that have no responsible owner or manager, and/or that are in a dilapidated condition. Across the country thousands of these vessels sit dormant in ports, harbors, estuaries, and other waterways (NOAA Marine Debris Program). At a minimum, they pose an eyesore and inhibit recreational and economic activities, but often they also threaten the environment due to toxins on board, they invite illegal dumping, or they even cause a hazard to navigation. In certain areas the problem is so vast due to the number of vessels that it outpaces response and cleanup efforts.

The problem is compounded by the limitations in capabilities and authorities on the parts of individual agencies to effectively combat this issue. In large part, the government’s ability to prevent or mitigate damage to the environment or hazards to navigation from vessels operating in

their areas of responsibility can be characterized as the creation of incentive to inspire action on the part of the vessel owner. The vessel owner or operator is incentivized not to discharge pollutants or cause a navigational hazard because they will be penalized if they do. Where there is no owner to incentivize, the responding agency has no “teeth” to discourage allowing a vessel to fall into disrepair. There is concern that the limited recourse on the parts of the local, state, or federal government agencies, and limited understanding of what courses of action the collective inter-agency does have resulted in compounding numbers of vessels that have been abandoned or are in a derelict condition in a number of locations.

The NRT chartered a workgroup to collate existing information regarding stakeholders and responding agencies, laws, policies, jurisdictions, best practices, funding mechanisms, removal and disposal options, and existing state programs in an effort to maximize efficiencies and opportunities to collaborate for responsible organizations addressing the issues. The workgroup classified the gamut of vessels that are in either poor condition or without a responsible owner under the working definitions of “abandoned” or “derelict,” acknowledging that these two terms do hold very specific definitions in different states and municipalities. The “National Response Team Authorities and Best Practices Guidance” (NRT AVG) was published in 2014, and the team that compiled this document presented during IOSC 2014 to socialize it and share their findings (Kimrey and Helton, 2014).

The document was organized by category and followed the general pattern of response, rather than being organized by individual agency policies or statutes, to promote collaboration and synergy. The sections were broken down as follows:

- ***Section 1.0 – Background and Purpose*** includes information on the purpose and background of this Guidance, assumptions, and the overarching pattern of response for abandoned vessels.

- **Section 2.0 – Definition of Terms** provides information on the terms associated with abandoned vessels.
- **Section 3.0 – Initial Assessment** describes the steps involved in abandoned vessel assessment, including documentation and safety considerations.
- **Section 4.0 – Response Authorities** provides an overview of the applicable laws and regulations relating to abandoned vessels, wrecks, and hazards to navigation.
- **Section 5.0 – Funding Authorities** provides information on the use of federal funds for the removal of abandoned vessels, when funds can be used, when they cannot, and under what authorities.
- **Section 6.0 – Vessel Removal and Options for Ultimate Disposition** describes response options based on federal authorities and funding established in previous sections. This section discusses various removal methods, constraints, and documentation procedures for response activities (NRT Abandoned Vessel Authorities and Best Practices Guidance).¹

The NRT agreed, as part of the promulgation of the 2014 version of this document, that its content would be periodically reviewed and updated to continue to meet the needs of its intended users: Federal On-Scene Coordinators and other response professionals charged with preserving the environment and U.S. waterways. In 2016, the NRT Members and RRT Co-Chairs discussed creating an Appendix to the document to specifically outline procedures for responding to multiple vessels which have simultaneously become “abandoned” or rather “displaced,” as in, moved from the vessel’s prior location by a catastrophic incident. This appendix idea was tabled due to limited resources and competing priorities.

Then, the unprecedented Atlantic Hurricane Season in 2017 forced NRT member agencies to wrestle with understanding the courses of action to respond to displaced vessels washing ashore on federally-owned lands. Responses organized under Presidentially Declared Disasters trigger a whole-of-government effort under the Stafford Act in which Emergency Support Functions (ESF) are stood up, and agencies are tasked through Mission Assignments (MA) to

¹ See “how to use this guidance” pg. vii of the reference in parentheses

provide relief to the states and territories that have requested assistance from the federal government. The nature of this relief is designed for states and local governments; it is not applicable on federally owned land to “render aid” to federal government entities. For this reason, the Stafford Act MAs could not be extended to apply to clean-up efforts being taken on federally owned property.

U.S. Coast Guard and U.S. Environmental Protection Agency each hold authority to remove pollution or threats thereof under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), derived from the Clean Water Act (CWA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This authority is administered by the U.S. Coast Guard and the Environmental Protection Agency’s “Federal On-Scene Coordinators” (FOSC). The FOSC is charged with coordinating response actions to mitigate or respond to imminent and substantial threats of discharge of oil pollution or release of hazardous substances into the environment (40CFR300.3 and 40CFR300.120). Along these lines, vessels that the FOSC cannot articulate pose imminent and substantial threats of discharge or release into the environment are not subject to the FOSC authority under the NCP.

Stafford Act authorities do not apply to response operations on federally owned lands and FOSC authorities could not apply wherever the FOSC did not determine an “imminent and substantial threat of discharge” of an oil product or hazardous substance. Owners of vessels that had simply broken free of their moorings or anchorages during the storm and grounded or beached on federally owned land were not eligible for the same federal relief that their counterparts were whose vessels happened to wash ashore on privately or state-owned property. The federal and cognizant state, local, and territorial governments involved in the responses worked hard to find amenable solutions.

The NRT elected to re-open and update the AVG to document the findings and conclusions that had been so carefully and thoughtfully crafted. NRT Membership tasked the Preparedness Committee with updating the NRT AVG document to include findings and best practices identified during the 2017 Atlantic Hurricane Season. What follows is a summary of the procedures undertaken to update the NRT AVG and advocacy for federal, state, local, territorial, tribal, and private entity use of the contents therein.

METHODOLOGY

The Preparedness Committee commenced the update to the NRT AVG in December of 2017. The Committee reviewed the 2014 NRT AVG and voted to holistically revise the entire document rather than simply append the document with a section on multiple simultaneous vessel casualties. The Preparedness Committee identified an inter-agency team comprised of members from agencies with a stake or role in the various authorities and jurisdictions pertaining to abandoned/derelict vessel disposition to update the document. This workgroup identified eight topics that thematically surfaced in Preparedness Committee review. The eight topics revisited were:

- Issues Arising on Public Lands
- Multiple Simultaneous Vessel Casualties
- ESF#10 / Actions taken under Stafford Act Declaration
- Disposal of Vessels
- Storage of Vessels
- Nuances with Foreign Flagged Vessels
- Other Contaminants (non-CERCLA/ OPA)
- Intersection of Public Lands, Stafford Act, and FOOSC Authority (referred to by the group as the “Trifecta Topic”).

Using each of these eight topical areas as lenses, the workgroup combed through cutting-edge literature on derelict, abandoned, or displaced vessels; advocated for their agencies’ interests and capabilities; and developed language to provide clarity or add content to satisfy

each of the eight identified areas. Once this task was completed the workgroup revisited and addressed each of the Preparedness Committee's initial comments that were not absorbed by the systematic, topically organized update. The result is a comprehensive portfolio of information that is current to the changing landscape as of 2020 and addresses both the concerns that one may face under CERCLA, Oil Pollution Act of 1990 (OPA) or Stafford Act structured responses, as well as the broader gamut of derelict, abandoned, or displaced vessel issues a responder may come against. Upon completion of comment review, the document was submitted to the Preparedness Committee and NRT membership for review and approval, and once it was approved by the NRT members, it was posted to the NRT website².

RESULTS

As a result of the process outlined above that the NRT AVG workgroup undertook, several key pieces of information were either added or updated to make the document current and comprehensive. What follows is a summary of major changes to the 2014 NRT AVG that the reader may find in the updated, 2020 NRT AVG:

Federal Responsibilities during Disaster Response clarified. Options and parameters for federal vessel removal actions during declared disaster response is refined. The document explains Stafford Act statutory limitations for federal response options on federally owned lands. It further clarifies the scope of the authority of the FOSC to conduct vessel removal options (for the Coast Guard, only with Commandant approval) and pollution removal options without removing the vessel, when the FOSC determines an "imminent and substantial threat" of a discharge under the NCP. When a vessel beaches or grounds on lands owned by or maintained by a federal government agency, and the FOSC does not deem an imminent and substantial

² <https://nrt.org/Main/Resources.aspx?ResourceType=Abandoned%20Vessels&ResourceSection=2>

threat of discharge, the two primary response mechanisms used by NRT agencies are nullified. The document explains the policies governing federal actions under these two primary mechanisms and offers some alternatives for cases such as these, including recommendations to the land-owner for seeking emergency appropriations and for closely coordinating response efforts with nearby ongoing response efforts where possible.

Mass-Vessel Casualty Section added. There is an additional section for nuances to consider when an incident causes multiple vessels to simultaneously become displaced, abandoned, etc. This section is broken into sections based on the type of causal event: “natural disasters” or “acts or omissions of a third party.” This section was built to provide the reader with recommendations for additional tools and resources that may be required when a typical response operation does have the requisite amount of resources accessible. It also focuses primarily on “displaced” vessels versus truly abandoned or derelict vessels, since the cause is typically not time and neglect but a specific and acute incident, and the owner may still be involved or desire to be involved.

Foreign Flagged Vessel clarifications. There is clarification for actions and limits of authority when the flag-state of the vessel is pertinent. In many instances, the flag-state of the vessel may not impact or change the authorities, funding sources, or best practices for agencies dealing with abandoned, derelict, or displaced vessels. The workgroup combed the document to identify areas where the flag-state of the vessel would change the scenario and added clarifying language to assist the reader.

Storage and Disposal Options updated. Both short and long-term vessel storage options, and vessel removal and disposal considerations were updated to reflect the most current policies, best practices, and options.

Other Contaminants Issues expanded. The 2020 NRT AVG includes information that extends beyond the organic purview of the NRT, because workgroup members concluded that other contaminants or issues outside the NRT purview that a responder may face would add usefulness to the document. This is captured in text throughout the document, and is also currently being worked in an “Other Contaminants Table” that explains who the cognizant authority is for say a squatter, installed fire-fighting equipment, old fishing gear, firearms or weapons, etc. While the NRT’s member agencies may not have authority to lead actions to respond to these situations, this table gives the user guidance for where to find the authority and potential funding source. The Other Contaminants Table will be posted to the NRT website upon completion as a resource and will be considered for inclusion in the third edition of the NRT AVG.

Definitions clarified. Workgroup members refined the working definitions of abandoned, derelict, and displaced to better encompass the suite of challenges this document is intended to address. The definitions of abandoned and derelict vessels vary from municipality to municipality, but because the intent behind the NRT’s decision to compile this document was to provide the broadest guidance possible, the definitions are designed to be overarching enough to ensure applicability to a myriad of circumstances, and the term “displaced” is included to more accurately describe the condition of vessels impacted by a disaster.

Vessel location considerations expanded. The document already contained helpful information for the responders to consider with respect to the location of the vessel for safety, to mitigate further harm to the environment, or to identify a source of authority and funding to act. The document was updated to provide cautionary information for the responder depending on the location of the vessel. For instance, responders must be cognizant of the ownership of the

property in disaster response as has been described above, and the document also offers guidance in cases where a responder is looking to access private property.

Agency roles and responsibilities clarified. Stakeholder agencies such as U.S. Army Corps of Engineers, U.S. Navy (Supervisor of Salvage), National Oceanic and Atmospheric Administration's Marine Debris Program, U.S. Coast Guard, and U.S. Environmental Protection Agency refined descriptions of the authority, funding, capabilities and typical processes throughout the document to best reflect current practices. In addition, language was added to encourage the responder to collaborate with law enforcement teams when there is evidence to suggest acts or omissions of third parties (such as in the case of a marina fire, or if illegal dumping is suspected).

Policy references updated. Several policy documents referenced in the 2014 NRT AVG have been updated since its promulgation. The 2020 NRT AVG was updated to include the latest references and information consistent with the most current versions of the referenced policies.

State Abandoned/ Derelict Vessel Programs table updated. Appendix C of the NRT AVG contains a brief description of state programs to mitigate abandoned or derelict vessel issues. This table was updated to reflect current practices for each state (as of 2020).

Clarified Endangered Species Act considerations. As procedures for achieving and maintaining compliance with Endangered Species Act Section 7 have evolved over the past few years, language congruent with current USCG Office of Marine Environmental Response Policy (CG-MER) programmatic direction was updated or added.

CONCLUSION

The National Response Team continues to emphasize and prioritize efforts to mitigate the abandoned and derelict vessel problem nationwide. The updated National Response Team

Abandoned Vessels Authorities and Best Practices Guidance is designed to unite various federal, state, local, territorial, and non-government stakeholders to maximize synergies in tackling this challenging issue by compiling the full suite of capabilities available. As the response landscape changes, the National Response Team will look to update the document again and may consider other measures to stay abreast of the abandoned and derelict vessel problem.

The updated NRT AVG is organized similarly to the 2014 version. It is intended to be used as a holistic guide for all things abandoned, derelict, and displaced vessels. An emergency manager or member of an agency with a stake in derelict/abandoned vessel management should consider using this document to find partner agencies with the authorities and resources to contribute. It compiles best practices that may be useful region to region in developing Area Contingency Plans or Local Emergency Plans. The document outlines the key statutes that govern federal responses to abandoned or derelict vessels, making it simpler to understand what a responder can or cannot do given their specific circumstances. It provides lessons learned in the form of case studies on previous derelict or abandoned vessel actions, organized with keywords, to assist the reader in finding help with addressing a similar situation.

Due to the complexity and limited options for taking action to mitigate derelict, abandoned, or displaced vessels and the nuances and policies that change from municipality to municipality, this is likely to be an issue into the foreseeable future. The first step in eradicating, even reducing this problem is knowing what can and cannot be done under the law. The 2020 NRT AVG is a great resource to learn what can and cannot be done by different federal and even some state agencies. The next step is purposefully integrating steps to take mitigating action within local and regional committees; the local emergency planners are in the position to affect change. The 2020 NRT AVG is also a great resource to provide guidance for how to incorporate abandoned

and derelict vessel mitigation strategies into an Area Contingency Plan or Local Emergency Plan. Collaboration and a mindset of collective responsibility to address this challenge will yield more successful results in effectively combatting this issue, region by region and port by port.

REFERENCES

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