

# Abandoned and Derelict Vessels in the Commonwealth: How to Improve Virginia's ADV Program



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## About the Author



Anthony Cusato is a third-year law student at William & Mary Law School. Anthony was born and raised in San Diego, California and later attended California Polytechnic State University San Luis Obispo, where he received a B.S. in Biological Sciences with a concentration in Marine Biology and Conservation and a minor in Statistics in 2016. Before coming to William & Mary Law School, Anthony spent two years as a scientific aid with the California Department of Fish and Wildlife where he worked on the California Recreational Fisheries Survey (CRFS). Anthony has spent his summer internships working for the Maryland

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## About the Virginia Coastal Policy Center

The Virginia Coastal Policy Center (VCPC) at the College of William & Mary Law School provides science-based legal and policy analysis of ecological issues affecting the state's coastal resources, by offering education and advice to a host of Virginia's decision-makers, from government officials and legal scholars to non-profit and business leaders.

With two nationally prominent science partners – the Virginia Institute of Marine Science and Virginia Sea Grant – VCPC works with scientists, local and state political figures, community leaders, the military, and others to integrate the latest science with legal and policy analysis to solve coastal resource management issues. VCPC activities are inherently interdisciplinary, drawing on scientific, economic, public policy, sociological, and other expertise from within the University and across the country. With access to internationally recognized scientists at VIMS, to Sea Grant's national network of legal and science scholars, and to elected and appointed officials across the nation, VCPC engages in a host of information exchanges and collaborative partnerships.



VCPC grounds its pedagogical goals in the law school's philosophy of the citizen lawyer. VCPC students' highly diverse interactions beyond the borders of the legal community provide the framework for their efforts in solving the complex coastal resource management issues that currently face Virginia and the nation.

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## I. INTRODUCTION

In February 2021, the U.S. Environmental Protection Agency (EPA) partnered with the local sheriff's office, the California Department of Fish and Wildlife, and the regional water quality control board to remove an abandoned boat that had sunk about 300 yards from the south shore of Lake Tahoe.<sup>1</sup> Because the forty-foot vessel was reportedly leaking oil, the EPA and the other agencies spent around \$20,000 to raise the vessel and remove it from the water.<sup>2</sup> After it was removed from the water, the vessel was taken to the U.S. Coast Guard's facility in Tahoe City because the owner could not be immediately identified.<sup>3</sup> After unsuccessful attempts to find the owner of the vessel, authorities discovered that the owner of the vessel was deceased and his next of kin refused any responsibility for the vessel.<sup>4</sup> Considerable time and public resources went into removing this abandoned vessel from the water and eventually disposing of it, a scenario that is becoming increasingly common across multiple coastal and inland states.

This story illustrates the difficulties that the government agencies tasked with removing and disposing of abandoned and derelict vessels (ADV) face. Vessels abandoned or lost by their owners can get stuck on a shoreline or in a marsh, aimlessly float adrift, or sink in a waterway.<sup>5</sup> As the number of ADVs increases, efforts to address them similarly intensify. Typically, state government agencies handle most ADVs, and their approaches to ADV control and removal vary widely across jurisdictions. Virginia faces an increasing number of ADVs and can learn from other states to improve its approach. This paper examines the current Virginia ADV program and considers how it can be amended to make it more effective. It then identifies policies from other states' ADV programs and recommends how some of these policies can be implemented in Virginia to improve its ADV program.<sup>6</sup>

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<sup>1</sup> *EPA Removes Sunken, Oil-Leaking Boat from Lake Tahoe*, AP NEWS (Feb. 23, 2021), <https://apnews.com/article/water-quality-wildlife-lakes-environment-california-f8034b9c0d2baa11d3d3ff7d1971568a>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *See Abandoned and Derelict Vessels*, NOAA MARINE DEBRIS PROGRAM OFF. OF RESPONSE AND RESTORATION, <https://marinedebris.noaa.gov/what-marine-debris/abandoned-and-derelict-vessels> (Jan. 6, 2022, 2:08 PM).

<sup>6</sup> This paper addresses recreational ADVs, not commercial vessels. It focuses on recreational vessels for three reasons. First, the majority of ADVs are recreational vessels. PAC. STATES/BRIT. COLUMBIA OIL SPILL TASK FORCE, *THE CURRENT STATE OF ABANDONED AND DERELICT VESSELS ON THE WEST COAST 1* (2019), <https://oilspilltaskforce.org/wp-content/uploads/2019/03/ADV-White-Paper-FINAL.pdf>. Likewise, the regulatory framework for removing commercial ADVs is in theory similar to recreational ADVs, but in practice is more complicated due to tracking ownership of larger cargo vessels (e.g., commercial vessels are more likely to be registered or flagged internationally or in another state). And finally, preliminary cost estimates show that commercial ADV removal is prohibitively expensive compared to recreational. *See id.* at 5-6.

## II. ABANDONED AND DERELICT VESSELS GENERALLY

The definition of “abandoned and derelict vessels” varies by state.<sup>7</sup> Additionally, different federal agencies and statutes define “abandoned vessels” differently.<sup>8</sup> In general, an abandoned vessel is one where the owner is unknown or has relinquished ownership rights.<sup>9</sup> A derelict vessel is generally one that has an identifiable owner but is inoperable, for example one that is in disrepair, damaged, sinking, or sunk.<sup>10</sup> While abandoned and derelict vessels are defined separately in some instances, in practice they tend to be interchangeable. Hence, the broad term in this paper “abandoned and derelict vessels” (ADV) encompasses both.

ADV typically cause navigational obstructions and environmental hazards,<sup>11</sup> but they can be nuisances for other reasons as well. An ADV that is adrift can damage structures such as living shorelines and docks.<sup>12</sup> Additionally, an ADV in a navigation channel can be a serious safety hazard for other vessels; if sunken, it may not be seen by a vessel above water and, if adrift, it may not have any lights or other safety measures to help avoid collisions.<sup>13</sup> These boater safety concerns have made ADVs an increasingly prioritized issue for governments to address.<sup>14</sup> ADVs can also seriously impact the environment.<sup>15</sup> Depending on the type of vessel, its use, and its location, ADVs can present environmental concerns such as fuel or oil leaks, toxic paints, sewage, and leaching battery chemicals.<sup>16</sup> ADVs can also damage fragile habitats such as oyster or coral reefs, mangroves, and wetlands.<sup>17</sup> The damage to these aquatic habitats is an additional example of the negative effects of ADVs.<sup>18</sup> Further, ADVs can cause various economic costs for affected property owners and others tasked with removing them.<sup>19</sup>

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<sup>7</sup> U.S. NAT’L RESPONSE TEAM, ABANDONED VESSEL AUTHORITIES AND BEST PRACTICES GUIDANCE 6 (2020).

<sup>8</sup> *See id.* at 1 (identifying differing definitions of “abandoned” vessels by the U.S. Army Corps of Engineers and the U.S. Coast Guard).

<sup>9</sup> *Abandoned and Derelict Vessels Fact Sheet*, NOAA MARINE DEBRIS PROGRAM OFF. OF RESPONSE AND RESTORATION (2017), <https://marinedebris.noaa.gov/fact-sheets/abandoned-and-derelict-vessels-fact-sheet>.

<sup>10</sup> *Id.*

<sup>11</sup> *See* U.S. NAT’L RESPONSE TEAM, *supra* note 7, at 5.

<sup>12</sup> *See id.*

<sup>13</sup> *See Derelict and Dangerous: When Vessels Become Marine Debris*, NOAA OFF. OF RESPONSE AND RESTORATION, <https://response.restoration.noaa.gov/derelict-and-dangerous-when-vessels-become-marine-debris> (Nov. 12, 2021, 12:20 PM).

<sup>14</sup> *See, e.g., OR&R Supports State of Virginia in Addressing Abandoned and Derelict Vessels*, NOAA OFF. OF RESPONSE AND RESTORATION, <https://response.restoration.noaa.gov/orr-supports-state-virginia-addressing-abandoned-and-derelict-vessels> (Jan. 22, 2021 4:43 PM).

<sup>15</sup> *The Anatomy of Abandoned and Derelict Vessels*, NOAA OFF. OF RESPONSE AND RESTORATION, <https://response.restoration.noaa.gov/anatomy-abandoned-and-derelict-vessels> (Dec. 20, 2021, 4:00 PM).

<sup>16</sup> Doug Helton, *Peeking Inside the Anatomy of a Derelict Vessel*, NOAA OFF. OF RESPONSE AND RESTORATION, <https://response.restoration.noaa.gov/peeking-inside-anatomy-derelict-vessel> (Aug. 22, 2019, 2:14 PM).

<sup>17</sup> *Damage from Abandoned and Derelict Vessels*, WORKBOAT (May 28, 2019), <https://www.workboat.com/coastal-inland-waterways/damage-from-abandoned-and-derelict-vessels>.

<sup>18</sup> *See id.*

<sup>19</sup> *See e.g., Katherine Hafner, Abandoned Boats Are a Growing Concern, State Officials Say. A Virginia Beach Man Is Taking on the Issue in Local Waters*, VIRGINIAN-PILOT (Nov. 21, 2021, 1:03 PM), <https://www.pilotonline.com/news/environment/vp-nw-abandoned-vessels-20211121-ryv5soroxfgelos4ihjr4eegxq->

Addressing the problems associated with ADVs can be challenging for several reasons.<sup>20</sup> These challenges include: identifying which vessels have become ADVs and their locations; determining the threats they pose to public safety and the environment; determining proper jurisdictional authority to retrieve and dispose of them; identifying and locating their owners; and evaluating how to remove them.<sup>21</sup> Additionally, removing ADVs can be difficult and expensive.<sup>22</sup> If the vessel is still afloat, best practices for preserving public safety and proactively eliminating environmental threats dictate that the ADV should be towed away from its current location and, if possible, removed entirely from the water.<sup>23</sup> If an ADV is partially or completely sunk, then the costs and effort of raising the vessel to the surface can make the removal process significantly more expensive.<sup>24</sup> Further, in many instances the owner of an ADV cannot be identified, sometimes due to deliberate concealment of ownership such as removing vessel identification registration numbers.<sup>25</sup> Therefore, the burden of ADV removal and disposal is inevitably left to government agencies, marinas, or personal property owners.<sup>26</sup> Most states can recover the costs of ADV removal from the owner of the vessel, but when the owner cannot be identified—or the owner is deceased, imprisoned, or indigent—those costs are borne by the state and the taxpayers.<sup>27</sup> Additionally, because current funding for ADV removal is typically quite limited, states may find it difficult to adequately dispose of their current backlog of ADVs.<sup>28</sup>

Even when they are removed from the water, ADVs still need to be disposed of safely. Because fiberglass boats have increased in popularity over the past fifty years, many of them are reaching the end of their lifespans and potentially could become ADVs.<sup>29</sup> Unlike an abandoned car, which might have at least some scrap or other salvage value from its mostly metal structure, old fiberglass boats are practically worthless and tend to cost more to remove, prepare for disposal, and dispose of than their parts are worth.<sup>30</sup> There have been efforts to reuse fiberglass to help ease

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[story.html](#) (conveying the concerns of the president of a Virginia Beach oyster aquaculture company about the potential of a nearby abandoned vessel being pushed by a storm into his lease and causing damage).

<sup>20</sup> “Controlling” ADVs includes identification, removal, disposal, and preventative measures taken to address them.

<sup>21</sup> U.S. NAT’L RESPONSE TEAM, *supra* note 7, at 5.

<sup>22</sup> *See id.*

<sup>23</sup> *See Surrendered and Abandoned Vessel Exchange (SAVE)*, CAL. STATE PARKS DIV. OF BOATING AND WATERWAYS, [http://dbw.parks.ca.gov/?page\\_id=28816](http://dbw.parks.ca.gov/?page_id=28816) (last visited Feb. 2, 2021) (select the sub-link “What Is the SAVE Grant?” then see “Vessel Turn-In Program (VTIP)).

<sup>24</sup> *See* PAC. STATES/BRIT. COLUMBIA OIL SPILL TASK FORCE, *supra* note 6, at 5.

<sup>25</sup> Chris Horne, *Ditched and Dangerous: Abandoned Boats Put Mariners, Swimmers, Wildlife in Jeopardy*, WAVY-TV 10 NEWS (Nov. 15, 2021, 6:20 PM), <https://www.wavy.com/news/local-news/virginia-beach/ditched-and-dangerous-abandoned-boats-put-mariners-swimmers-wildlife-in-jeopardy/>.

<sup>26</sup> *See* Hafner, *supra* note 19.

<sup>27</sup> *See id.*

<sup>28</sup> *See id.*; PAC. STATES/BRIT. COLUMBIA OIL SPILL TASK FORCE, *supra* note 6, at 6-7.

<sup>29</sup> *See* Corina Ciocan, *Nautical Not Nice: How Fibreglass Boats Have Become a Global Pollution Problem*, THE GUARDIAN (Aug. 6, 2020, 6:32 AM), <https://www.theguardian.com/environment/2020/aug/06/nautical-not-nice-how-fibreglass-boats-have-become-a-global-pollution-problem>; George Marsh, *50 Years of Reinforced Plastic Boats*, MATERIALS TODAY (Oct. 8, 2006), <https://www.materialstoday.com/composite-applications/features/50-years-of-reinforced-plastic-boats/>.

<sup>30</sup> *See* Dieter Loibner, *Fiberglass Disposal Part 1*, PRO. BOATBUILDER MAG. (Jan. 25, 2021), <https://www.proboat.com/2021/01/fiberglass-disposal/>.

the disposal burden of ADVs, but these are mostly pilot programs and cannot yet significantly alleviate the numbers of ADVs destined for landfills.<sup>31</sup>

Finally, addressing ADVs raises due process concerns for various reasons. First, because ADVs are typically personal property, a government cannot take that property without following strict steps, designed to protect their citizens' property rights.<sup>32</sup> For instance, some states require anyone seeking to obtain title to an ADV to post notice of intent to obtain custody in a newspaper and mail notice to the last known address of the previous owner, before taking custody of the vessel.<sup>33</sup> Additionally, because ADVs sometimes serve as a person's home, localities and states should be mindful of the process and issues regarding entering someone's home when proceeding with any process to remove or otherwise address ADVs in their jurisdictions.<sup>34</sup>

### III. VIRGINIA'S ADV PROGRAM

Virginia's approach to addressing the increasingly prevalent issue of ADVs is piecemeal, with responsibilities split between different state agencies and relevant statutes in multiple chapters and sections of the Code of Virginia. Virginia law defines "abandoned watercraft" as a "watercraft that is left unattended on private property for more than [ten] days without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property."<sup>35</sup> Virginia does not formally use the term "derelict" in its statutes. "Watercraft" is defined in the same section of the Code broadly as "any vessel that is used or capable of being used as a means of transportation on water . . ." <sup>36</sup> but there are eight exceptions that follow, such as seaplanes, amphibious vehicles, floating structures not propelled, U.S. and foreign government vessels, lifeboats, and U.S. Coast Guard-documented vessels.<sup>37</sup> These definitions are in the code sections for the Department of Wildlife Resources (DWR).

The Virginia Marine Resources Commission (VMRC) is the other state agency involved in ADV control in Virginia. The VMRC has statutory authority to remove ADVs.<sup>38</sup> Specifically, it has the authority to remove a vessel that is "found in or upon the bays, oceans, rivers, streams

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<sup>31</sup> See, e.g., RHODE ISLAND MARINE TRADES ASS'N, RHODE ISLAND FIBERGLASS VESSEL RECYCLING (RIFVR) PILOT PROJECT (2020), <http://rimta.org/wp-content/uploads/2020/06/RIFVR-Background-6-2020.pdf>.

<sup>32</sup> See U.S. CONST. amend. V; see also VA. CONST. art. I, § 11.

<sup>33</sup> WASH. REV. CODE § 79.100.040 (2013).

<sup>34</sup> See generally U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."). *But see* United States v. Albers, 136 F.3d 670, 673 (9th Cir. 1998) (finding that the automobile exception applied to a warrantless search of an "obviously mobile" houseboat located "in open public waters" where "an objective observer would conclude that" the houseboat was being used "as a vehicle.").

<sup>35</sup> VA. CODE ANN. § 29.1-733.2 (2014).

<sup>36</sup> *Id.*

<sup>37</sup> See *id.*

<sup>38</sup> VA. CODE ANN. § 28.2-1210(A) (1999).

or creeks of the Commonwealth in a state of abandonment, in danger of sinking, or in such disrepair as to constitute a hazard or obstruction to the use of such waterway . . . .”<sup>39</sup> If an ADV is somewhere that is not within VMRC’s jurisdiction, which covers state owned bottomland waterward past the mean low water line up to three nautical miles offshore,<sup>40</sup> like on a freshwater lake, it is unclear exactly who would be responsible for removal.

VMRC may notify the owner of an abandoned vessel and require the owner to remove the vessel.<sup>41</sup> An owner that fails to address an abandoned vessel within a week of receiving notice from VMRC may be charged with a class three misdemeanor.<sup>42</sup> However, if the vessel is abandoned because of a natural disaster or other “act of God,” VMRC must wait sixty days after such an event before sending notice to the owner.<sup>43</sup> For vessels lost in a storm, the owner of the vessel may have trouble finding it,<sup>44</sup> and therefore the state provides more time for them to do so. If the owners of a vessel cannot be ascertained, VMRC may remove it after providing notice by publication in a newspaper where the vessel was found.<sup>45</sup>

Virginia law authorizes localities to enact ordinances that empower them to remove, repair, or require removal of abandoned vessels, such as a pier or wharf, and present a danger to public safety or a hazard to navigation.<sup>46</sup> The locality can require the owner of the vessel to remove or secure these vessels at their own cost or the locality can have their agents do it after giving “reasonable notice” at the expense of the owner.<sup>47</sup> If the owner of the vessel cannot be identified, the locality must give notice in a newspaper of general circulation for at least two weeks before acting.<sup>48</sup> Authorizing statutes like this one are required under Virginia law before localities can enact certain types of ordinances because of the Dillon Rule of statutory construction.<sup>49</sup> Under the Dillon Rule in Virginia, localities do not have the authority to address ADVs unless they enact an ordinance pursuant to an authorizing statute.<sup>50</sup> Further, even if a locality were to enact an

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<sup>39</sup> *Id.*

<sup>40</sup> VA. CODE ANN. § 28.2-101 (2012).

<sup>41</sup> VA. CODE ANN. § 28.2-1210(A) (1999).

<sup>42</sup> § 28.2-1210(B).

<sup>43</sup> *Id.*

<sup>44</sup> See THOMAS T. ANKERSEN ET AL., *BOATING, WATERWAYS, AND THE RIGHTS OF NAVIGATION IN FLORIDA* 113 (5th ed. 2019) (stating that insurance companies and responsible owners handled the majority of vessels that were set adrift or lost in Hurricane Irma but 945 of these vessels were not claimed and had to be removed by the USCG).

<sup>45</sup> § 28.2-1210(A).

<sup>46</sup> VA. CODE ANN. § 15.2-909 (1997). Some Virginia localities have exercised this power, enacting ordinances addressing abandoned vessels. See NORFOLK, VA., *CODE OF ORDINANCES* ch. 32, art. IV, §§ 32-73 (1999), 32-74 (1999); VIRGINIA BEACH, VA., *CODE OF ORDINANCES* ch. 6, art. I, §§ 6-26 (1965), 6-27 (1965), 6-29 (1984).

<sup>47</sup> § 15.2-909(1)-(2).

<sup>48</sup> § 15.2-909(4).

<sup>49</sup> The Dillon Rule is a common law rule of statutory construction that localities can only exercise the powers explicitly given to them by the Virginia legislature. See NAT’L LEAGUE OF CITIES, *Cities 101-Delegation of Power*, <https://www.nlc.org/resource/cities-101-delegation-of-power/> (last visited Apr. 29, 2021).

<sup>50</sup> *Bd. of Zoning Appeals of Fairfax Cty. v. Bd. of Sup’rs of Fairfax Cty.*, 276 Va. 550, 553–54 (Va. 2008) (“Dillon’s Rule provides that municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.”) (citing *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 246, 482 S.E.2d 812, 814 (Va. 1997)).

ordinance as described by the authorizing statute, the locality may not have the financial resources to remove ADVs within its jurisdiction.

When an ADV is on private property, such as at a marina, the property owner, marina manager, or harbor master can gain title to the vessel through a process set out in state law.<sup>51</sup> If a private property owner wishes to remove an ADV that is on its property because of someone else's doing, the property owner must gain title to the vessel through coordination with the Commonwealth before attempting removal.<sup>52</sup> The property owner may start this process when the vessel has been abandoned for more than sixty days on its property.<sup>53</sup> If the vessel owner can be identified, by registration number or otherwise, the person seeking title must make a good faith effort to locate the last known address of any registered owners or lienholders and mail them notice stating that they have thirty days to respond and remove the watercraft before that person may apply for title.<sup>54</sup> While Virginia law requires a vessel owner to report any change in ownership of that vessel to DWR within fifteen days,<sup>55</sup> violation of this law is merely a class four misdemeanor.<sup>56</sup> There are additional requirements for the property owner and the overall process of acquiring title to an ADV in Virginia is complicated and time consuming.<sup>57</sup> This long process is designed to dissuade people from claiming boats that are not actually abandoned or were simply lost in a storm event. The process also provides another layer of due process before a vessel owner's property may be taken.

Perhaps the most important aspect of an ADV program is whether it is sufficiently funded to remove and otherwise address ADVs. Virginia funds its ADV control efforts through the Marine Habitat and Waterways Improvement Fund.<sup>58</sup> The money in this fund, which is non-reverting,<sup>59</sup> can only be used for the "purposes of improving marine habitat and waterways, including the removal of obstructions or hazardous property from state waters."<sup>60</sup> The Virginia Legislature can directly appropriate monies for this fund, but it is also funded from any proceeds from the sale of state-owned bottomlands.<sup>61</sup> While the Virginia legislature funds the Marine Habitat and Waterways Improvement Fund through annual appropriations, the funding amount is insufficient

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<sup>51</sup> See VA. CODE ANN. § 29.1-733.25 (2013).

<sup>52</sup> § 29.1-733.25(B), (E).

<sup>53</sup> § 29.1-733.25(A).

<sup>54</sup> § 29.1-733.25(C).

<sup>55</sup> 4 VA. ADMIN. CODE § 15-380-50 (2003).

<sup>56</sup> 4 VA. ADMIN. CODE § 15-380-130 (2003).

<sup>57</sup> In addition to attempting to locate the last known owner, the person seeking title must also post notice in three consecutive issues of a newspaper of general circulation in the city or county where the vessel is located. VA. CODE ANN. § 29.1-733.25(D). The notice must state that if the vessel is not claimed and removed within thirty days of the first appearance of the notice in the publication, then the person seeking title will apply for ownership. *Id.* After thirty days, the person seeking title can apply for title with DWR, providing proof that they have met all the required steps of the process. § 29.1-733.25(E).

<sup>58</sup> VA. CODE ANN. § 28.2-1204.2 (2000).

<sup>59</sup> *Id.* Non-reverting funds are not returned to the state's general fund in the event of a surplus in the specific account.

<sup>60</sup> § 28.2-1204.2 (2000).

<sup>61</sup> *Id.*



to adequately deal with Virginia's ADVs.<sup>62</sup> Therefore, additional consistent annual funding is needed to properly address current and future ADVs in the Commonwealth. Also, because ADV removal is just one of the things that funds in the Marine Habitat and Waterways Improvement Fund are used for, a dedicated fund for ADV removal is preferable to the current approach.

#### IV. APPROACHES OF OTHER STATES

Considering how other states address ADV issues can help Virginia improve its approach. Specifically, examining the approaches of states that have more fully developed ADV programs can be particularly illustrative. Below are highlights from ADV programs in five states: Florida, North Carolina, Maryland, California and Washington.

##### A. Florida

Florida has a vast shoreline, sub-tropical weather, and a large boating community. The many vessels in Florida leads to a high incidence of ADVs.<sup>63</sup> Large storms and hurricanes also increase the significant number of ADVs in the state.<sup>64</sup> For example, after Hurricane Irma in 2017, the state and Coast Guard spent \$35 million to assess and help remove thousands of vessels from state waters.<sup>65</sup> The Coast Guard removed 945 vessels whose owners could not be identified.<sup>66</sup> In 2018, approximately 350 derelict vessels, unrelated to storm events, were identified around the state.<sup>67</sup>

The Florida Fish and Wildlife Conservation Commission (FWC) is the agency charged with handling ADV issues and coordinating ADV identification and removal statewide.<sup>68</sup> Florida defines a derelict vessel as one that is stored or abandoned in poor condition upon the public waters of the state, at a port without permission, or on private property without permission.<sup>69</sup> Florida does not specifically define "abandoned vessel," but the state's definition of a derelict vessel includes abandoned vessels, as derelict vessels are listed in the definition of abandoned property.<sup>70</sup>

Due to the high number of ADVs in the state, Florida has taken a variety of actions through state legislation to address this issue.<sup>71</sup> One of the most effective aspects of Florida's approach to

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<sup>62</sup> See Hafner, *supra* note 19.

<sup>63</sup> See ANKERSEN ET AL., *supra* note 44, at 114.

<sup>64</sup> See *id.*

<sup>65</sup> *Id.* at 113. Hurricane Irma affected 2,680 total boats. *Id.* Insurance claims and responsible owners handled the majority of them. *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 113-14.

<sup>68</sup> See FLA. STAT. § 327.4107 (2021). FWC has broad authority over the waterways, state lands, and natural resources across the entire state. See FLA. STAT. § 379.3313 (2012); *What We Do*, FLA. FISH AND WILDLIFE CONSERVATION COMM'N, <https://myfwc.com/about/inside-fwf/le/what-we-do/> (last visited Jan. 8, 2022).

<sup>69</sup> FLA. STAT. § 823.11(1)(b) (2021).

<sup>70</sup> FLA. STAT. § 705.101(3) (2014).

<sup>71</sup> See ANKERSEN ET AL., *supra* note 44, at 114-16.

ADVs is its at-risk vessel identification and intervention program.<sup>72</sup> The Florida At-Risk Vessel Program aims to reduce the number of ADVs and saving public resources by preemptively addressing vessels “at risk of becoming derelict” before they actually become derelict.<sup>73</sup> Under the At-Risk Vessel Program, FWC can determine a vessel to be at risk of becoming derelict for a variety of reasons, including if the vessel is taking on water or partially sunk, has broken lose from its anchor or ties, is incapable of getting underway, and if the vessel does not have effective means of propulsion.<sup>74</sup>

Once FWC has determined that a vessel is at risk of becoming derelict, the agency can attempt to speak with the owner of the vessel so the owner has the opportunity to keep their vessel from becoming derelict.<sup>75</sup> If the owner cannot be contacted directly, FWC can leave a notice tag on the vessel to notify the owner that the vessel is at risk of becoming derelict and can note specific issues of concern with the vessel.<sup>76</sup> In addition to FWC, federal law enforcement, such as the Coast Guard, and local law enforcement can identify at risk vessels and give notice to owners.<sup>77</sup> If necessary, FWC can issue a fine to the owner of a vessel at risk of becoming derelict, ranging from one hundred to five hundred dollars.<sup>78</sup> If the vessel owner cannot be determined or found, FWC can proceed with the standard procedures for removing derelict vessels, as discussed later in this section. It is unclear how effective the At-Risk Vessel Program is in reducing the number of ADVs, but it is a popular program, as reported by both the FWC and localities.<sup>79</sup> Even one vessel that can be stopped from becoming derelict, can save a significant amount of taxpayer money that would have to be spent removing it from the water.<sup>80</sup>

Two statutes authorize FWC to remove ADVs on any state owned lands or waterways.<sup>81</sup> Law enforcement officers from FWC and other authorized law enforcement officers are “authorized and empowered to relocate, remove, or cause to be relocated or removed a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.”<sup>82</sup> Another statute permits FWC to remove ADVs from public waters generally, without the qualifications of obstructing navigation or endangering the environment, property, or persons.<sup>83</sup> The authorization granted to

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<sup>72</sup> See *id.* at 114-15.

<sup>73</sup> FLA. STAT. § 327.4107(1) (2021).

<sup>74</sup> FLA. STAT. § 327.4107(2) (2021).

<sup>75</sup> See Fla. Fish and Wildlife Conservation Comm’n., *Florida At-Risk Vessel Program*, YOUTUBE (Mar 28, 2013), <https://www.youtube.com/watch?v=gf4a8WjljbQ>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> FLA. STAT. § 327.73(1)(aa) (2021).

<sup>79</sup> See Teresa Stepzinski, *New Florida Law Aims to Prevent Derelict Vessels; Removal Can be Pricey*, NEW FLA. TIMES UNION (Aug. 6, 2016, 10:22 PM), <https://www.jacksonville.com/news/metro/2016-08-06/story/new-florida-law-aims-prevent-derelict-vessels-removal-can-be-pricey>.

<sup>80</sup> See *id.*

<sup>81</sup> FLA. STAT. § 376.15 (2021); FLA. STAT. § 823.11 (2020).

<sup>82</sup> § 823.11(3).

<sup>83</sup> Compare § 376.15(3)(a), with § 823.11(3).

FWC is broad permitting the agency to remove any derelict vessel from public waters.<sup>84</sup> In addition to both permitting removal, the two sections share other similarities.<sup>85</sup> Both statutes shield FWC, and any other law enforcement officer acting under this section, from liability for damage to a derelict vessel they are removing, unless there are acts of gross negligence or willful misconduct.<sup>86</sup> Both allow FWC to recover the costs of removal or relocation—provided that the owner can be found and can pay the costs.<sup>87</sup> Both statutes also require that removal contractors be broadly insured to cover liability for any damages incurred during their removal efforts.<sup>88</sup>

These two statutes also have some notable differences. The first statute, contained in the “Public Nuisances” chapter of the “Crimes” title in the Florida Statutes, includes the definition of derelict vessel and establishes a violation of the section as a misdemeanor while also allowing civil penalties against the owner of a derelict vessel.<sup>89</sup> This statute also prohibits anyone from living on a vessel that has been deemed derelict by FWC until the vessel is returned to a non-derelict state, as determined by FWC, or is removed from the waters of the state.<sup>90</sup> Instead of the enforcement provisions and definitions included in the first statute, the second statute includes an important funding provision that outlines a grant program for localities to obtain funding from FWC to address ADVs.<sup>91</sup> The second statute is part of natural resources title of the Florida Statutes. The difference in the placement of these two statutes in the Florida statutory scheme makes sense given the differences between the two—one establishes a criminal aspect for ADVs while the other establishes a funding scheme for ADV removal—but it is notable how similar these two statutes are because they establish FWC’s authority to remove ADVs in multiple locations within Florida’s laws.

Florida authorizes FWC, by statute, to create a grant program to reimburse localities for their ADV removal efforts.<sup>92</sup> The Florida legislature appropriates money for this grant program each fiscal year, from two specific state trust funds, and then FWC decides how to allocate the money.<sup>93</sup> If the available grant money is not fully used by localities by the end of the third quarter, FWC can use the remainder for their own removal efforts.<sup>94</sup> The statute contains a list of three factors for FWC to consider when allocating money but it is not an exhaustive list.<sup>95</sup> The grant

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<sup>84</sup> See § 376.15(3)(a).

<sup>85</sup> Compare FLA. STAT. § 823.11(3)-(4) (2020), with FLA. STAT. § 376.15(3)(a)-(c) (2021).

<sup>86</sup> § 376.15(3)(b); § 823.11(3).

<sup>87</sup> § 376.15(3)(a); § 823.11(3)(b).

<sup>88</sup> § 376.15(3)(c); § 823.11(3)(c).

<sup>89</sup> FLA. STAT. § 823.11(1)(b), (5) (2020).

<sup>90</sup> § 823.11(6).

<sup>91</sup> See FLA. STAT. § 376.15(3)(d)-(e) (2021).

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

<sup>94</sup> See § 376.15(3)(d).

<sup>95</sup> See § 376.15(3)(e)(1)-(3). The three factors listed in the statute are: the number of derelict vessels in the jurisdiction, the hazards or threats posed by the vessels, and the degree of commitment of local governments to ADV control, including willingness to take legal action against those who abandon their vessels in the waters of the state. *Id.* Notably, the second factor includes threat to the “aesthetic condition of the general vicinity” in addition to the more traditional threats posed by ADVs, such as navigation and environmental hazards. § 376.15(3)(e)(2).

program fully reimburses localities for their removal efforts.<sup>96</sup> In the 2018-2019 fiscal year, the total funding available for ADV removal was \$1 million.<sup>97</sup> The grant program is exclusively for government bodies, specifically state and local governments.<sup>98</sup> A significant portion of the FWC budget, including its funding for derelict vessel removal, comes from taxes on fuel sales in the state, including a specific tax on marine fuel sold at marinas.<sup>99</sup>

A notable aspect of Florida's approach to ADVs is that Florida requires law enforcement involvement when a private party is seeking title to an ADV.<sup>100</sup> For a private party to obtain title to an ADV, they must first inform law enforcement of the ADV, under Florida's found property laws, before they can begin the process of seeking title to the vessel.<sup>101</sup> This requirement to go through law enforcement could dissuade some people from trying to claim a vessel that is not truly abandoned. Accordingly, having a similar requirement would be an attractive addition to the Virginia ADV program as it could alleviate concerns some have that marina owners or other private parties might try to take advantage of the system to claim ADVs that are not truly abandoned by their owners.

## B. North Carolina

North Carolina defines an abandoned vessel as one "that has been relinquished, left, or given up by the lawful owner without the intention to later resume any right or interest in the vessel."<sup>102</sup> The North Carolina Supreme Court, has ruled that an owner of a sunken or derelict vessel can abandon it so effectively as to relinquish any ownership over the vessel or its contents.<sup>103</sup> The case at bar regarded long-sunken vessels and the effort to salvage them, including a Spanish galleon that had sunk in North Carolina waters in the early eighteenth century.<sup>104</sup> The court found that the vessels were abandoned but also ruled that the wrecks, sitting on the seabed in North Carolina waters, were property of the state.<sup>105</sup> While most of the ADVs in North Carolina are not treasure hunting related, the ruling is still relevant to the question of whether a vessel has been abandoned. North Carolina's ADVs on state bottomlands are the property and responsibility of the state if the owners cannot be found.

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<sup>96</sup> 2021/2022 *Derelict Vessel Removal Grant Program*, FLA. FISH AND WILDLIFE CONSERVATION COMM'N, <https://myfwc.com/boating/grants-programs/derelict-vessel/> (last visited Mar. 3, 2022).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> See FLA. STAT. § 206.606(1)(d) (2021).

<sup>100</sup> See *Derelict, Abandoned & At Risk Vessels*, FLA. FISH AND WILDLIFE CONSERVATION COMM'N, <https://myfwc.com/boating/waterway/derelict-vessels/> (last visited Mar. 3, 2021); FLA. STAT. § 705.102 (2019).

<sup>101</sup> *Derelict, Abandoned & at Risk Vessels*, *supra* note 100.

<sup>102</sup> N.C. GEN. STAT. § 75A-2(1) (2006).

<sup>103</sup> See *State ex rel. Bruton v. Flying "W" Enterprises*, 160 S.E.2d 482, 488 (N.C. 1968).

<sup>104</sup> See *id.* at 483.

<sup>105</sup> See *id.* at 494.

The North Carolina Wildlife Resources Commission (WRC) is the agency primarily responsible for the identification and removal of ADVs in the state.<sup>106</sup> This agency, in conjunction with the Department of Environment and Natural Resources (DENR) and the U.S. Army Corp of Engineers, has the authority to remove “any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.”<sup>107</sup> When WRC hires a contractor to remove an ADV from state waters, the agency retains full title to the vessel, shielding the contractor from the potential liability for the storage and disposal of the ADV.<sup>108</sup> WRC does not have a formal prioritization system for ADVs that require removal, but will defer to DENR to determine environmental hazards and remove those vessels with higher priority.<sup>109</sup> Under North Carolina law, ADVs are also subject to the litter laws of the state, which are enforced by DENR.<sup>110</sup>

North Carolina improved its ADV program after major storms, such as Hurricane Florence, made ADVs a bigger priority in the state. In 2019 the North Carolina General Assembly committed \$1 million to ADV removal and identification efforts.<sup>111</sup> The North Carolina General Assembly directed the North Carolina WRC to recommend legislation and funding requirements to address the issue of ADVs more effectively.<sup>112</sup> The agency recommended legislative changes in a report, including broader and clearer grant of authority to WRC to address ADVs, more coordination and support for local government efforts, and stricter requirements for notification to WRC of ownership changes of vessels.<sup>113</sup> North Carolina’s WRC also recommended a grant program to support local efforts and allowing WRC to recover costs of removal from owners as key funding aspects of their recommended approach.<sup>114</sup> Finally, the report also recommended a vessel turn-in program as a preventative measure.<sup>115</sup> North Carolina’s recommendations are a good example of options other states are considering to improve their ADV programs. Likewise, these recommendations can provide a framework to help Virginia improve its ADV program.

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<sup>106</sup> See NOAA MARINE DEBRIS PROGRAM, STATE OF NORTH CAROLINA ABANDONED AND DERELICT VESSEL LEGISLATIVE AND ADMINISTRATIVE REVIEW 2 (2015), [https://marinedebris.noaa.gov/sites/default/files/ADV-Docs/NORTH\\_CAROLINA\\_ADV\\_Legal\\_Review\\_2015\\_NOAA\\_MDP.pdf](https://marinedebris.noaa.gov/sites/default/files/ADV-Docs/NORTH_CAROLINA_ADV_Legal_Review_2015_NOAA_MDP.pdf).

<sup>107</sup> N.C. GEN. STAT. § 143-355(b)(5) (2017).

<sup>108</sup> Clean Virginia Waterways of Longwood University, *Laws & Policies Subcommittee of the VA Abandoned & Derelict Vessels Work Group*, YouTube (Feb. 10, 2021), <https://www.youtube.com/watch?v=IVOuJ5y0oeE> (presentation by Major Ben Meyer of the North Carolina Wildlife Service to the Virginia Abandoned & Derelict Vessels Work Group, Law and Policy Subcommittee).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* See also N.C. GEN. STAT. § 76-40(a) (2015) (North Carolina littering law concerning vehicles, equipment, or waste left in navigable waters of the State).

<sup>111</sup> *Abandoned Vessel Removal to Begin in March*, N.C. COASTAL FED’N (March 15, 2021), <https://www.nccoast.org/2021/03/abandoned-vessel-removal-to-begin-in-march/>.

<sup>112</sup> N.C. WILDLIFE RES. COMM’N, FINAL REPORT TO THE NORTH CAROLINA GENERAL ASSEMBLY DERELICT AND ABANDONED VESSELS 1 (2019), <http://www.longwood.edu/cleanva/images/ADV%20North-Carolina-General-Assembly-Report.pdf>.

<sup>113</sup> *Id.* at 6.

<sup>114</sup> *Id.* at 6-7.

<sup>115</sup> *Id.* at 7.

## C. Maryland

Maryland's ADV program, known as the "Maryland Abandoned Boat and Debris Program," has several attractive features. One notable feature is Maryland's excise tax used to fund its ADV program.<sup>116</sup> Maryland charges a five percent excise tax on all boats purchased in the state, including sales of both new and used vessels.<sup>117</sup> The revenue from this tax directly funds the Maryland ADV program, including grants to localities.<sup>118</sup> The excise tax provides the Maryland Department of Natural Resource (DNR), the lead agency for ADV issues in the state, a significant amount of money, millions of dollars annually, for their Waterway Improvement Fund.<sup>119</sup> While most of this funding is allocated to dredging projects instead of ADV removal, the state has dedicated hundreds of thousands of dollars annually to address its derelict vessels.<sup>120</sup> On average, about fifty vessels are removed annually at a cost of \$2,500-6,500 per vessel. Maryland has committed as much as \$500,000 in a single year for ADV removal, all funded by the excise tax.<sup>121</sup> Maryland's ADV program also includes a grant program that can be used by localities to remove and dispose of ADVs in their respective jurisdictions.<sup>122</sup> DNR's grant program is used sparingly, with only a few grants being issued each year to deal with particularly problematic areas, while the majority of responsibility for ADV removal remains with DNR.<sup>123</sup>

The Maryland DNR has broad authority to remove ADVs or delegate authority to localities to remove them.<sup>124</sup> This grant of authority shields DNR or the localities from liability from damage to the vessel in removal efforts.<sup>125</sup> DNR has the authority to proactively remove a vessel from the water that is in extreme disrepair or poses a hazard to navigation, health, or the environment, without prior notice to the owner.<sup>126</sup> However, DNR still must send notice to the owner, if

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<sup>116</sup> Excise taxes are taxes that are imposed on specific goods or services. *Excise Tax*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/excise-tax> (Oct. 15, 2021).

<sup>117</sup> *Maryland Abandoned Boat and Debris Program*, MD. DEP'T OF NAT. RES., <https://dnr.maryland.gov/Boating/Pages/abandonedboats.aspx> (last visited Mar. 3, 2022).

<sup>118</sup> *Id.*

<sup>119</sup> See UNIV. OF MD. ENV'T FIN. CTR., VESSEL EXCISE TAX AND IMPACTS THROUGH THE WATERWAYS IMPROVEMENT FUND 3 (2017).

<sup>120</sup> CHRISTINE LORD BORING & IAN J. ZELO, NAT'L OCEANIC & ATMOSPHERIC ADMIN., REVIEW OF STATE ABANDONED AND DERELICT VESSEL PROGRAMS 4 (2006) [https://www.ncei.noaa.gov/data/oceans/coris/library/NOAA/CRCP/project/1022/review\\_state\\_abandon\\_derelict\\_vessel\\_program.pdf](https://www.ncei.noaa.gov/data/oceans/coris/library/NOAA/CRCP/project/1022/review_state_abandon_derelict_vessel_program.pdf); Mary Gail Hare, *Abandoned Boats Litter Md. Waterways, with Few Resources to Remove Them*, THE BALTIMORE SUN, July 17, 2010, <https://www.baltimoresun.com/news/bs-xpm-2010-07-17-bs-md-co-derelict-boats-hazard-20100716-story.html>.

<sup>121</sup> NOAA MARINE DEBRIS PROGRAM, STATE OF MARYLAND ABANDONED AND DERELICT VESSEL LEGISLATIVE AND ADMINISTRATIVE REVIEW 4 (2015).

<sup>122</sup> *Maryland Abandoned Boat and Debris Program*, MD. DEP'T OF NAT. RES., <https://dnr.maryland.gov/Boating/Pages/abandonedboats.aspx> (last visited Mar. 3, 2022).

<sup>123</sup> E-mail from Matt Negley, Derelict Boats & Debris Coordinator, Md. Dep't of Nat. Res. to author (Apr. 9, 2021, 11:12 EST) (on file with author).

<sup>124</sup> See MD. CODE ANN., NAT. RES. § 8-721 (2020).

<sup>125</sup> MD. CODE ANN., NAT. RES. § 8-721(b)(3) (2020). According to state agency staff, Maryland's liability shield seems to be effective. E-mail from Matt Negley, *supra* note 123.

<sup>126</sup> MD. CODE ANN., NAT. RES. § 8-721(g) (2020).

locatable, within fifteen days of removing the vessel or post notice in a publication of general circulation.<sup>127</sup> Costs of removal can be assessed to the owner if they claim the vessel.<sup>128</sup> If the vessel remains unclaimed three weeks after notice or publication, DNR can sell the vessel at auction.<sup>129</sup>

Maryland also authorizes a marina to take preemptive action on vessels left at the marinas. If a vessel is left for more than forty-eight hours at a marina without authorization, and after a reasonable attempt to contact the owner, the marina can remove it from the water or move it elsewhere within thirty miles of the marina.<sup>130</sup> The marina owners must post clear notice of where the vessel has been moved to, why it was moved, and how it can be reclaimed.<sup>131</sup> A marina owner who wishes to obtain ownership of the vessel must go through the full process for obtaining title to an abandoned vessel, including posting notice in a paper of general circulation and additional attempts to find and contact the owner of the vessel.<sup>132</sup> Marina owners do not often utilize the authority to temporarily remove vessels from their property because the process is complicated and time consuming.<sup>133</sup> Regardless, it is an example of a law that provides a pathway for marina owners to proactively deal with vessels at risk of becoming derelict.

#### D. California

California collects funds for its ADV program specifically from recreational vessels.<sup>134</sup> State agencies, and local governments through delegation from state agencies, have authority to remove commercial ADVs but do not have sufficient funding to do so.<sup>135</sup> The focus on recreational vessels is primarily due to how California funds its ADV removal efforts.<sup>136</sup> California primarily raises the money for ADV removal efforts through the combination of a surcharge on marine fuel sales and recreational vessel registrations.<sup>137</sup> Commercial vessels that incidentally buy fuel subject to the fuel surcharge, such as smaller vessels that can buy fuel at a recreation fuel dock, are eligible to have the surcharges refunded at the end of each year by retaining their fuel receipts and submitting them to the California State Parks Division of Boating and Waterways.<sup>138</sup> The focus on recreational ADVs has resulted in a backlog of identified commercial ADVs that need to be removed.<sup>139</sup> California typically raises approximately two million dollars per year through fuel

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<sup>127</sup> MD. CODE ANN., NAT. RES. § 8-721(c)(2)(ii), (e) (2020).

<sup>128</sup> MD. CODE ANN., NAT. RES. § 8-721(d)(4) (2020).

<sup>129</sup> MD. CODE ANN., NAT. RES. § 8-721(f) (2020).

<sup>130</sup> MD. CODE ANN., NAT. RES. § 8-721.1(a)-(b), (d) (1995).

<sup>131</sup> MD. CODE ANN., NAT. RES. § 8-721.1(a) (1995).

<sup>132</sup> See MD. CODE ANN., NAT. RES. § 8-722 (2002).

<sup>133</sup> E-mail from Matt Negley, *supra* note 123.

<sup>134</sup> See PAC. STATES/BRIT. COLUMBIA OIL SPILL TASK FORCE, *supra* note 6, at 4; CAL. REV. & TAX CODE § 8352.4(a) (2017).

<sup>135</sup> See PAC. STATES/BRIT. COLUMBIA OIL SPILL TASK FORCE, *supra* note 6, at 6.

<sup>136</sup> See *id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 4

<sup>139</sup> See *id.* at 6.

surcharges, but this amount is only about half as much as is estimated to be needed to address recreational ADVs in the state.<sup>140</sup> The funding required to address the backlog of commercial ADVs is estimated to be tens of millions of dollars.<sup>141</sup>

California also has a Vessel Turn in Program (VTIP) and a grant program for locality removal efforts through the Abandoned Watercraft Abatement Fund (AWAF).<sup>142</sup> These programs have been combined into one grant application, called the Surrendered and Abandoned Vessel Exchange (SAVE), to simplify the process for localities.<sup>143</sup> Grant money from the SAVE program can be used to reimburse localities for expenses relating to the “abatement, removal, storage, and disposal of abandoned vessels” and “removal, storage, towing, hazmat removal, demolition and disposal” of vessels in the turn in program.<sup>144</sup> To be eligible for VTIP, a vessel owner must have clear title that is free and clear of loans or liens.<sup>145</sup> The AWAF program is only available for recreational vessels.<sup>146</sup> California administers the SAVE program through its State Parks Division of Boating and Waterways, but the majority of the actual removal and disposal efforts are done by localities who are then reimbursed through the SAVE program.<sup>147</sup> Localities can take the lead on removing ADVs can reduce the burden on the state agencies, which can be spread thin over a state such as California with a long coastline. Virginia also has a long coastline, thus a program that could reduce the burden on the state would be a good fit.

The SAVE program has become quite popular, and California now has more vessels surrendered to turn in programs than abandoned vessels.<sup>148</sup> A primary reason for the rise in popularity and utilization of the SAVE program is the outreach by localities, particularly to marina owners who can identify at-risk vessels and spread the word about vessel turn in directly to vessel owners.<sup>149</sup> The increasing utilization of the turn in programs has saved the state significant amounts of money by eliminating the cost required to remove vessels from the water as well as the resources it takes to locate vessel owners.<sup>150</sup> These savings will likely continue and possibly increase in the future with even more participation in turn-in programs. Continued outreach and prevention is a priority for California, so the state can avoid removing ADVs from the water with salvage costs on the rise.<sup>151</sup> The potential savings that a vessel turn-in program can provide to a state make it an extremely attractive option as a preventative measure, and one that Virginia should consider.

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Surrendered and Abandoned Vessel Exchange (SAVE)*, CAL. STATE PARKS DIV. OF BOATING AND WATERWAYS, [http://dbw.parks.ca.gov/?page\\_id=28816](http://dbw.parks.ca.gov/?page_id=28816) (last visited Mar. 3, 2021).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* (select the sub-link “What Is the SAVE Grant?”).

<sup>145</sup> *Id.* (select the sub-link “How to Surrender My Vessel?”).

<sup>146</sup> *Id.* (select the sub-link “What Is the SAVE Grant?”).

<sup>147</sup> *See id.*

<sup>148</sup> E-mail from Ron Kent, Surrendered and Abandoned Vessel Exch., Cal. State Parks Div. of Boating and Waterways to author (Apr. 9, 2021, 15:59 EST) (on file with author).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*



## E. Washington

Washington's Derelict Vessel Removal Program, administered by the Washington State Department of Natural Resources (DNR), has helped the state combat ADVs in its waters.<sup>152</sup> Since the program was instituted in 2002, more than 900 ADVs have been removed in Washington.<sup>153</sup> While the ADV program is primarily run by DNR, authority to remove ADVs is given to a variety of different state agencies, local governments, and port districts.<sup>154</sup> Before DNR, or other authorized public entity, can remove a vessel, they must take custody of the vessel.<sup>155</sup> To take custody of a vessel, DNR must mail a notice of its intent to obtain custody at least twenty days prior to taking custody to the last known address of the previous registered owner and to any lien holders or secured interests on record.<sup>156</sup> The notice must also be posted on the vessel for at least thirty days and be published at least once in a newspaper of general circulation within the county in which the vessel is located.<sup>157</sup> The notice of intent must also be posted online on the Department of Natural Resources webpage.<sup>158</sup> When undergoing removal efforts, DNR, or other authorized public entity, and any contractors hired to assist in the removal effort, are shielded from civil liability for damages resulting from removal efforts, except for actions constituting gross negligence or willful misconduct.<sup>159</sup> In addition to its ADV removal efforts, DNR has a vessel turn-in program, limited to vessels less than forty-five feet long, that aims to reduce costs of removal and disposal of ADVs by dealing with them proactively.<sup>160</sup> The vessel turn-in program started with a \$200,000 funding cap, which has been since removed.<sup>161</sup>

Washington also has specific process requirements when transferring a boat to a new owner. For instance, if the purchaser of a vessel does not register it, then the previous owner of the vessel is held responsible if the vessel becomes abandoned or derelict.<sup>162</sup> Washington also urges all boat sellers to keep receipts, and all documents showing the sale of the boat.<sup>163</sup>

Washington's legislature directed its DNR to create informal guidelines for how to prioritize ADV removal efforts.<sup>164</sup> DNR keeps an inventory list of identified ADVs in the state

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<sup>152</sup> See *Recovering Derelict Vessels*, WASH. STATE DEP'T OF NAT. RES., <https://www.dnr.wa.gov/derelict-vessels> (last visited Mar. 3, 2022).

<sup>153</sup> *Id.*

<sup>154</sup> See *id.*

<sup>155</sup> WASH. REV. CODE § 79.100.040(1) (2013).

<sup>156</sup> § 79.100.040(1)(a).

<sup>157</sup> § 79.100.040(1)(b).

<sup>158</sup> § 79.100.040(1)(c). See also *Notices of Intent*, WASH. STATE DEP'T OF NAT. RES., <https://www.dnr.wa.gov/programs-and-services/aquatics/derelict-vessels/notices-intent> (last visited Mar. 3, 2022).

<sup>159</sup> WASH. REV. CODE § 79.100.030(3) (2021).

<sup>160</sup> *Vessel Turn-In Program*, WASH. STATE DEP'T OF NAT. RES., <https://www.dnr.wa.gov/programs-and-services/aquatics/derelict-vessels/vessel-turn-program> (last visited Mar. 3, 2021).

<sup>161</sup> *Id.*

<sup>162</sup> WASH. REV. CODE ANN. § 79.100.150 (2020).

<sup>163</sup> See *Recovering Derelict Vessels*, WASH. STATE DEP'T OF NAT. RES., <https://www.dnr.wa.gov/programs-and-services/aquatics/derelict-vessels/vessel-turn-program> (last visited Mar. 3, 2022).

<sup>164</sup> WASH. REV. CODE § 79.100.100(2) (2014).

and categorizes them into five priority levels.<sup>165</sup> The highest priority is for emergencies, such as vessels that are in danger of sinking, blocking a navigation channel or leaking fuel or hazardous substances.<sup>166</sup> Priority level two is for vessels that pose an existing or probable future but non-immediate threat to safety or the environment.<sup>167</sup> The third priority level is for vessels that pose a threat to natural habitats that are not covered by the first two levels.<sup>168</sup> The fourth level is for minor navigation or economic impacts such as impacts to private property, and, level five is a general catchall category for vessels that do not fit in the other four categories.<sup>169</sup> These priority levels can guide reimbursement decisions by DNR for local removal efforts, with higher priority levels being more likely to be reimbursed. Establishing a prioritization scheme can help ensure that resources are used efficiently and that the ADVs that pose the largest threats to navigation or the environment are dealt with promptly.

Washington's Derelict Vessel Removal Program is funded by two accounts within the state's treasury.<sup>170</sup> The Derelict Vessel Removal Account, the main source of funding, is funded through recreational vessel registration fees and commercial vessel fees.<sup>171</sup> The Aquatic Lands Enhancement Account is funded by revenue from state-owned aquatic leases.<sup>172</sup> In the 2019-2021 biennium, the total budget for the program was \$2.5 million.<sup>173</sup> Washington also imposes a derelict vessel removal fee on all persons required "to list any ship or vessel with the department of revenue for state property tax purposes" under Washington property tax law.<sup>174</sup> The derelict vessel removal fee is one dollar per vessel foot, measured by extreme length of the vessel and rounded up to the nearest whole foot.<sup>175</sup> This fee is due annually and charged on the vessel owner's annual personal property tax statement, which is then deposited directly into the Derelict Vessel Removal Account.<sup>176</sup> Charging a scaled fee, instead of flat fee, to fund ADV removal is perhaps a fairer approach because larger ADVs tend to be more expensive to remove, therefore charging a larger vessel more for an ADV fee could be fairer approach than a flat fee.

## V. RECOMMENDATIONS

Based on the foregoing examples, Virginia could adopt certain policies that would improve its ADV program. The policies discussed below are some of the most preferable options to increase funding, provide guidance for dealing with existing ADVs, and prevent more vessels from

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<sup>165</sup> See *Derelict Vessel Inventory and Funding*, WASH. STATE DEP'T OF NAT. RES., <https://www.dnr.wa.gov/programs-and-services/aquatics/derelict-vessels/derelict-vessel-inventory-and-funding> (last visited Mar. 3, 2022).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *See id.*

<sup>171</sup> *See id.*

<sup>172</sup> *See id.*

<sup>173</sup> *See id.*

<sup>174</sup> See WASH. REV. CODE § 79.100.180 (2014) (citing WASH. REV. CODE § 84.40.065 (1993)).

<sup>175</sup> § 79.100.180(1)(c).

<sup>176</sup> § 79.100.180(2), (5).

becoming ADVs in the future. As discussed in the introduction section of this paper, only recreational vessels are considered in the scope of this research. Therefore, the recommendations below only address recreational ADVs in the Commonwealth, and not commercial.

## **A. Funding**

The most pressing issue regarding addressing Virginia's backlog of existing ADVs is securing funding. There are a range of funding possibilities, from taxes to increased boater registration fees. Below are three potential funding options and a recommendation that a new fund be created specifically for ADV control.

### **1. Impose a Fee on Recreational Vessels**

Imposing a fee to fund ADV removal and other costs associated with the program is one option. Virginia could charge all recreational vessel owners a fee to fund its ADV program, similar to Washington's annual derelict vessel removal fee.<sup>177</sup> Washington's Derelict Vessel Removal Fee is a scaled fee, set at a certain dollar cost per foot of total vessel length.<sup>178</sup> This scaled fee may be fairer than a flat fee because it requires larger vessels, which will likely be more expensive to remove if they become ADVs, to pay more than smaller vessels. Virginia could choose to follow Washington's lead and impose this fee proportionate to the length of a vessel or based on another metric. If an ADV program fee were collected at the same time as vessel registration fees, DWR would be responsible for collecting the fees, but the money should fund an account that could be accessed by VMRC, or other authorized agencies, who would actually be coordinating removal efforts, provided these agencies are specifically funded to do so.

### **2. Create a New ADV Fund Account**

Currently, funding for ADV removal in Virginia could come from the Marine Habitat and Waterways Improvement Fund (WIF), which is appropriated from the General Assembly to VMRC. However, none of these funds have recently been allocated to address ADVs, because the money in that account can be used for anything related to the "purposes of improving marine habitat and waterways, including the removal of obstructions or hazardous property from state waters."<sup>179</sup> Because there are other urgent matters that are funded by the WIF, an appropriation of \$250,000 per year is likely not sufficient to address ADVs as well. Therefore, to ensure that the funding raised for the ADV program is actually used for the ADV program, and not for a different project that would qualify for funds from the WIF, a new account should be created specifically for the ADV program, or the General Assembly should appropriate additional funding to the WIF and clearly specify that the VMRC may or must use a pre-approved portion of the funds for ADV

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<sup>177</sup> WASH. REV. CODE § 79.100.180 (2014).

<sup>178</sup> § 79.100.180(c) ("The annual derelict vessel removal fee is equal to one dollar per vessel foot measured by extreme length of the vessel, rounded up to the nearest whole foot.").

<sup>179</sup> VA. CODE ANN. § 28.2-1204.2 (2000).

issues. A new account should also be non-reverting to ensure that the money for the ADV program does not revert into the general fund of the Commonwealth at the end of each fiscal year.

### **3. Impose Excise Tax on Vessel Sales**

The Virginia Legislature could also enact an excise tax on vessels sold in Virginia to fund its ADV program. Maryland funds its ADV control efforts entirely through such a tax. The Maryland Waterway Improvement Fund typically receives approximately one million dollars per year from the state's excise tax on vessels, a portion of which is then used to fund ADV removal.<sup>180</sup> If Virginia chooses to enact an excise tax, its rate should correspond with how much revenue Virginia wants to raise for its ADV program, fairness, and political palatability. Maryland's five percent tax could be a good baseline value to start. Any tax would need to be approved and set by the Virginia legislature. Taxes generally, and new taxes specifically, are unpopular, but an excise tax on vessel sales would only affect boaters, thus imposing the cost on those who might ultimately benefit from the newly funded ADV program in Virginia.

### **4. Implement Fuel Surcharges/Taxes**

Virginia could also implement a fuel tax to fund its ADV program, as Florida has done.<sup>181</sup> Further, Virginia has an existing tax that could serve as a model for a new tax.<sup>182</sup> A fuel tax could be applied only to the sale of marine fuel at boat fuel docks, which would help ensure the burden of the tax is only imposed on boaters, who would be benefiting from the ADV control efforts that are funded by the tax. Again, a new tax would need to be approved by the Virginia legislature and may be a difficult proposition considering how unpopular tax increases tend to be. A potential drawback of a fuel tax is that it could be avoided by some boaters, specifically those with smaller vessels on trailers, who can fuel their vessels at a regular gas station.<sup>183</sup>

### **5. Increase or Eliminate the Watercraft Sales Tax Cap and Institute a Minimum Tax**

Finally, Virginia could raise or abolish its cap on watercraft sales tax to increase funding for its ADV program. Currently, Virginia's sales tax on watercraft sales is capped at \$2,000.<sup>184</sup> This cap is in stark contrast with those of other states. For instance, Maryland's cap is \$15,000, while Florida's is \$18,000.<sup>185</sup> Because Virginia's cap is relatively low, it could be raised to help fund its ADV program. However, this option might meet opposition because raising taxes is

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<sup>180</sup> See UNIV. OF MD. ENV'T FIN. CTR., VESSEL EXCISE TAX AND IMPACTS THROUGH THE WATERWAYS IMPROVEMENT FUND 1 (2017).

<sup>181</sup> See FLA. STAT. § 206.606(1)(d) (2021).

<sup>182</sup> VA. CODE ANN. § 58.1-2289(D) (2020).

<sup>183</sup> See generally Don Onken, *Facts on Fuel from an Expert Boater*, N. AM. PRECIS SYNDICATE (May 23, 2019), <https://www.mynewstouse.com/stories/facts-on-fuel-from-an-expert-boater,536> (encouraging recreational boaters to fill their tanks from a standard gas station, despite concerns about engine performance and damage from ethanol).

<sup>184</sup> VA. CODE ANN. § 58.1-1402(3) (1990).

<sup>185</sup> *Can Boaters Avoid Paying Sales Tax?*, SCUTTLEBUTT SAILING NEWS (Apr. 29, 2019), <https://www.sailingscuttlebutt.com/2019/04/29/can-boaters-avoid-paying-sales-tax/>.

seldom popular. But because the cap currently benefits wealthier boaters purchasing higher priced vessels, it might not be uniformly opposed like other tax hikes might be.

Additionally, Virginia could institute a minimum sales tax on sold vessels to counter bills of sale that list a sales price so low that it allows a purchaser to avoid paying an adequate tax on them. Because the tax rate on vessels is two percent, a vessel listed as sold for \$100 would only be required to pay two dollars to the state in sales tax on a sale of that vessel—regardless of whether this was the amount for which the vessel actually sold.<sup>186</sup> A minimum sales tax of five dollars or ten dollars for all boat sales could ensure that these sham sales are not able to avoid paying this minimum amount.

## **B. Prevention**

After funding is in place, and the backlog of ADVs have been removed, preventative measures should be prioritized. Preventative steps are crucial to saving money and preventing navigational hazards or environmental harm in the future by reducing the number of vessels that become ADVs.

### **1. Identify At-Risk Vessels**

One preventative tactic that Virginia could implement would be an at-risk vessel identification program. The goal of an at-risk vessel program would be to reduce the number of vessels that become ADVs, which would save money and the effort needed to remove them from waterways later. Identifying at-risk vessels early could also allow enforcement officials to begin the removal process before the condition of the vessel worsens if the owner of the vessel cannot be identified or located. Florida has a well-developed at-risk vessel program that can be used as a model if Virginia chooses to implement a similar program.<sup>187</sup> One benefit of an at-risk vessel program is that the authority to identify at-risk vessels could be broadly spread between state and local law enforcement agencies to hopefully identify more vessels and not overburden any one agency with the responsibility.

Additionally, marina owners could play a role in identifying at-risk vessels on their properties, and they could be required to allow local or state law enforcement to periodically inspect the marinas. Asking marina owners to contribute to this goal would help ensure broad coverage of locations with potential ADVs. The state could also require marina owners to report at-risk vessels on their property to avoid any concern on their part about potentially angering their customers. Virginia could amend its existing requirement for a marina or boat storage facility to file annually with the local commissioner of revenue, upon request, a list of boats kept there, to also list any vessels at risk of becoming abandoned or derelict.<sup>188</sup>

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<sup>186</sup> VA. CODE ANN. § 58.1-1402 (1990).

<sup>187</sup> See *supra* Section VI.A.

<sup>188</sup> VA CODE ANN. § 58.1-3902 (2013).

The state could also provide marina owners with proactive authority to remove ADVs, or vessels in danger of becoming ADVs. Maryland has a law that gives marina owners some authority to remove at-risk vessels.<sup>189</sup> However, this law is unpopular because it is complicated, costly, and time consuming.<sup>190</sup> Maryland's approach could be improved upon by streamlining it to make it simpler to execute, and therefore more attractive to marina owners, while still providing adequate protections for the vessel owners.

The law could also be amended to require marinas to lease slips only to tenants who carry marine insurance policies for their vessels. However, this measure will likely do little to address ADVs generally because vessel owners who purchase boat insurance and keep their vessels in marinas are presumably also less likely to let them become ADVs than those who do not. Likewise, marinas already routinely require their tenants to maintain liability insurance coverage. Therefore, marinas could be required to go beyond current standard practice and require that their tenants carry insurance that includes a rider to cover salvage and disposal of the vessel, because standard insurance policies typically do not cover these events.

## **2. Create a Recreational Vessel Turn-In Program**

Another preventative program that Virginia could utilize is a program enabling vessel owners to turn in their boats to a state or local government agency. California and Washington have popular turn-in programs which are actively promoted by these states.<sup>191</sup> A vessel turn-in program can help proactively control ADVs by removing vessels from the water before they become abandoned, saving the expenses of having to remove an ADV from the water. The cost of disposing of a turned-in vessel can be as little as a quarter of the cost of removing that vessel from the water if became an ADV and then disposing of it.<sup>192</sup> Reducing removal expenses, and the cost associated with searching for the last known owner, could save significant amounts of taxpayer money in the long run and mitigate potential navigational and environmental hazards before they occur. A critical aspect to consider as part of a potential vessel turn-in program is who is going to administer it. As discussed below, an administrator of a newly formed Virginia ADV Program would likely be housed in either the DWR or VMRC, two agencies already involved in Virginia's current ADV program. In addition to identifying the physical status of "at-risk" vessels and tracking ownership, this new administrator would also need to determine what the original vessel designation was, to avoid former commercial vessels being converted to recreational ones for the purpose of turn-in program eligibility. Again, this new position would need to be properly funded.

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<sup>189</sup> See MD. CODE ANN., NAT. RES. § 8-721.1 (1995).

<sup>190</sup> E-mail from Matt Negley, *supra* note 123.

<sup>191</sup> See *supra* Part IV.D & E.

<sup>192</sup> E-mail from Ron Kent, *supra* note 148.

### 3. Improve Outreach and Public Education

Additionally, improving and increasing outreach efforts could reduce the number of ADVs and increase the efficacy of a turn-in program. Outreach to boaters and boating organizations can be done in a number of ways, including through information provided to boaters when they renew their boat registration and notices that can be posted at marinas and boat ramps. For example, California promotes its SAVE Program through marina owners so that they can share information on the program directly with their customers.<sup>193</sup> Other outreach methods could include informing boaters about Virginia's ADV program in boating safety classes. There is also a need to educate the boating public about the requirement to notify DWR when a vessel is transferred to someone else, or face a class four misdemeanor. Additionally, there is a need for public education regarding disposal procedures, including hazardous substances, reporting requirements of disposals, removal and recycling of the lead keel, removal of engines and gas tanks, as well as which landfills in Virginia accept fiberglass hulls and in what size. Finally, boat sellers should keep their receipts and all documents showing the sale of a vessel to a new owner.

## C. Process

There are additional procedural improvements that could be made to how Virginia approaches recreational ADV removal and disposal. These changes are intended to improve the process by which VMRC, and possibly other authorized agencies, remove(s) and dispose(s) of both the current and future stock of ADVs.

### 1. Strengthen Recordkeeping Requirements

Ensuring that records of ownership of vessels are current and that any transfers are properly tracked is a key aspect of controlling ADVs. The burden and cost on governments to remove ADVs is reduced when the owners can be identified, found, and forced to remove their vessels because Virginia law allows the costs of removal to be attributed to the owner and the owner can be charged with a misdemeanor for failure to rectify a vessel in abandonment or disrepair.<sup>194</sup> Notifying DWR of any transfers of interest in a vessel is required by law, and is punishable as a fourth degree misdemeanor,<sup>195</sup> but adding an increased fine, or imposing secondary liability for failure to notify, like Washington State has done,<sup>196</sup> could help ensure that people actually comply with this requirement. There will likely always be instances where the owners of ADVs cannot be identified or found but having the best possible records of ownership and transfers can help reduce these cases.

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<sup>193</sup> See *supra* text accompanying notes 148-50.

<sup>194</sup> VA CODE ANN. § 28.2-1210(A), (B) (1999).

<sup>195</sup> VA CODE ANN. § 29.1-746 (2006).

<sup>196</sup> WASH. REV. CODE ANN. § 79.100.150 (2020).

## 2. Require Removal of ADVs

Virginia’s ADV law authorizes the VMRC to remove ADVs but does not require that they do. VMRC’s authorization statute states that VMRC “may” remove ADVs, but this language could be changed to “shall” to mandate that VMRC remove ADVs.<sup>197</sup> Requiring VMRC to remove ADVs could help ensure that ADVs are dealt with expeditiously. However, because VMRC does not currently have sufficient resources to carry out such a mandate, if Virginia adds this mandate, it must ensure that sufficient funding and staffing are both available for ADV removals. In addition, the level of adequate funding should take into account that VMRC would likely use a competitive bid process for selecting a contractor to remove ADVs because the agency lacks heavy-duty equipment such as cranes and work barges required for the removal of vessels.<sup>198</sup>

## 3. Liability Shield

Liability concerns can be a barrier to ADV removal because contractors generally do not want to assume ownership of an ADV, and therefore assume liability for their disposal or for harms caused by ADVs. Contractors do not want to be sued by vessel owners if the owners of an ADV do come forward, and fear of liability could make contractors hesitant to assist in removal efforts. Including a liability shield, which would absolve the removing agency from any liability for damage to the ADV during the removal process, in the Virginia statutory scheme can help alleviate those concerns. Maryland, Florida, and Washington provide good examples of how a liability shield can be included in the statutory scheme.<sup>199</sup> Maryland’s liability shield is perhaps the best

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<sup>197</sup> VA. CODE ANN. § 28.2-1210(A) (1999).

<sup>198</sup> Telephone Interview with Justin Worrell, Habitat Mgmt. Div., Va. Marine Res. Comm’n (July 28, 2021).

<sup>199</sup> Maryland’s liability shield: “The Department, or a person removing, preserving, or storing an abandoned or sunken vessel on behalf of the Department, may not be held liable for any damage to an abandoned or sunken vessel which may occur during removal, storage, or custody of the vessel.” MD. CODE ANN., NAT. RES. § 8-721(b)(3) (2020).

Florida’s liability shield: “The commission, officers of the commission, and any other law enforcement agency or officer specified in s. 327.70 acting under this section to relocate, remove, or cause to be relocated or removed a derelict vessel from public waters shall be held harmless for all damages to the derelict vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct. A contractor performing relocation or removal activities at the direction of the commission, officers of the commission, or a law enforcement agency or officer pursuant to this section must be licensed in accordance with applicable United States Coast Guard regulations where required; obtain and carry in full force and effect a policy from a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor’s actions; and be properly equipped to perform the services to be provided.” FLA. STAT. § 376.15(3)(b)-(c) (2021).

Washington’s liability shield: “The authority granted by this chapter is permissive, and no authorized public entity has a duty to exercise the authority. No liability attaches to an authorized public entity that chooses not to exercise this authority. An authorized public entity, in the good faith performance of the actions authorized under this chapter, 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 an authorized public entity, who has entered into a written agreement pursuant to RCW 79.100.070, and who, in good faith, renders assistance or advice with respect to activities conducted by an authorized public entity pursuant to this chapter, is not liable for civil damages resulting from any act or omission in



model for Virginia to follow, both because of its breadth of coverage and its succinctness. Specifically, it covers contractors, in addition to Maryland's Department of Natural Resources, and also covers storage and custody of the ADV.<sup>200</sup> Additionally, Virginia's new liability shield provision could go a step further than Maryland's and cover other authorized public entities, such as local governments or other agencies. Maryland may not have needed such a provision because it performs the majority of its removals itself,<sup>201</sup> but if Virginia were to empower other agencies and local governments to also remove ADVs, then the liability shield should cover them as well. Therefore, the Commonwealth should assume title to an ADV to alleviate any potential concerns from contractors that do not want to obtain title, mainly due to liability concerns. This issue could be set by individual contracts if a removal contractor did want title to an ADV, but the default should be that the title will be held by the Commonwealth at all times during the removal and disposal process.

#### **4. Grant Program**

The Commonwealth could create a grant program that would be utilized to fund removal efforts by localities, fund a vessel turn-in program, or both. A state agency, or an administrator for a newly formed ADV program, would distribute money to planning district commissions who could then fund localities to reimburse their expenses for ADV removal and disposal or to a marina for expenses incurred through a turn-in program. The funding for a grant program would come from the general funding for ADVs, but instead of being used by the state agencies to remove ADVs themselves, those agencies would disburse grant monies to localities that are removing ADVs or to marinas that are part of a turn-in program. One of the benefits of a grant program is that it can be customized depending on how a state wants to use it in relation to the rest of their ADV program. Virginia could choose a grant program that is heavily utilized, like in California, used sparingly, like in Maryland, or anywhere in between. Localities are uniquely suited to determine which removals should be prioritized in their jurisdiction. However, localities that choose to participate in a grant program should partner with private towing and salvage companies so there is no conflict with them.

#### **5. Clarify Removal Authority**

If VMRC is duly funded to remove ADVs, then it will need to be clarified when localities versus VMRC can or must act. Local governments are more likely to be aware of ADVs or potential ADVs in their jurisdictions and may be able to address them more quickly than a state agency could. Funding will again be critical when considering whether to transfer additional removal authority to localities. VMRC does not have adequate funding to carry out its current removal authority, so sufficient funding must be in place before considering expanding removal

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the rendering of the assistance or advice, other than acts or omissions constituting gross negligence or willful or wanton misconduct." WASH. REV. CODE § 79.100.030(3) (2021).

<sup>200</sup> See MD. CODE ANN., NAT. RES. § 8-721(b)(3) (2020).

<sup>201</sup> See *supra* text accompanying notes 119-23.

authority outside of VMRC. Again, an assessment of sufficient funding should consider that VMRC would likely use a competitive bid process for selecting a contractor to remove ADVs, considering that the agency currently lacks heavy-duty equipment such as cranes and work barges required for the removal of vessels.<sup>202</sup> Many localities probably would face a similar situation and need to seek bids for ADV removal.

## **6. Clarify Disposal Procedures**

Another gap in Virginia's current ADV program is the lack of clear disposal procedures. Specifically, Virginia could add guidance about how to dispose of ADVs after it receives them. Maryland's DNR has provisions in its statutes that allow DNR to try to sell the vessel, keep it for their own use, or dispose of it.<sup>203</sup> Adding disposal procedures to VMRC's statutory authority would be helpful because VMRC would have some guidance on what it can do with an ADV in its possession. As discussed earlier, part of these disposal procedures is a clear indication of who has title to remove ADVs.

## **7. Add a Prioritization Scheme**

A prioritization scheme could be added to the ADV program to ensure efficient use of limited resources and to ensure that navigational and environmental hazards on public lands are mitigated promptly. Importantly, a prioritization scheme would logically need to follow the implementation of a vessel inventory, which would also need to be established. A prioritization scheme should be created by VMRC, or other responsible agency, instead of being included in the statutory scheme, but the prompt to do so should be included in the statutory scheme to ensure that one is created. Mitigating navigational hazards or critical environmental hazards should be top priorities.<sup>204</sup> Washington's approach is a good example of how a prioritization scheme can be implemented and how it can be structured to prioritize navigational hazards and environmental hazards. Washington's Department of Natural Resources is required by statute to develop and implement a prioritization scheme.<sup>205</sup> Washington's prioritization scheme prioritizes present navigational hazards or critical environmental hazards, such as leaking oil, for first removal.<sup>206</sup> Specialized state agencies that understand the environmental hazards associated with ADVs can help create the prioritization scheme to ensure that potential environmental harms are properly prioritized.

## **8. Improve Organization of Program Administration**

To improve the Virginia ADV program, a single lead administrator position could be created to lead the program. The Virginia General Assembly could place this administrative role

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<sup>202</sup> Telephone Interview with Justin Worrell, *supra* note 198.

<sup>203</sup> MD. CODE ANN., NAT. RES. § 8-721(f) (2020).

<sup>204</sup> See *supra* text accompanying notes 164-69.

<sup>205</sup> See WASH. REV. CODE § 79.100.100(2) (2014).

<sup>206</sup> See *Derelict Vessel Inventory and Funding*, *supra* note 165.

in the agency of their choosing. The lead administrator would be responsible for overseeing the operations of the program, including removal priorities, expenditures, and coordination with other agencies. In addition to a lead administrator, a committee to oversee the program could be created to ensure that the program is running efficiently. In addition, a committee or commission, either appointed by the governor or the General Assembly, could meet periodically to review the program and recommend changes to operations if necessary. Rhode Island's Derelict and Abandoned Vessel and Obstruction Removal Commission provides an example of how a committee could be comprised in Virginia. The Rhode Island Commission is led by a representative of the Rhode Island Department of Environmental Management and includes stakeholder representatives and legal counsel.<sup>207</sup> If such a body were housed within VMRC, the agency with jurisdiction to remove vessels in Virginia's tidal waters, the commission might delegate the ADV tracking, removal prioritization, and response coordination to staff, assisted by a working group or subcommittee comprised of technical experts, local government public works representatives, and others. The subcommittee could prioritize vessel removal and staff could present their recommendations to the commission for review and approval.

## 9. Fiberglass Reuse Program

Disposing fiberglass vessel hulls in landfills is a costly and wasteful process. While no technology to recycle fiberglass currently exists, reuse of the material as an alternative fuel as a heat source, is an emerging topic of interest.<sup>208</sup> Virginia could launch a pilot fiberglass recycling or reuse program to reduce the amount of fiberglass from ADVs that ends up in its landfills. The Rhode Island Fiberglass Vessel Recycling (RIFVR) program is an example of a reuse program that can be a model for Virginia. The RIFVR program collects fiberglass from ADVs, shreds it, and sends it to be used as a fuel component for cement manufacturing.<sup>209</sup> While RIFVR is a pilot program, and not initially cost-effective, it is a promising solution for fiberglass hull disposal by both Rhode Island and NOAA.<sup>210</sup>

## VI. CONCLUSION

Virginia's legislature can incorporate certain aspects of other states' programs to improve the State's ADV program. The first priority for Virginia should be securing a sufficient and reliable funding source, with a non-reverting fund that exclusively funds the ADV program. Next, there are many preventative programs and process improvements that Virginia could implement to strengthen its ADV program. Specifically, Virginia could create a vessel turn-in program and an at-risk vessel program. These programs could help reduce the number of vessels that eventually

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<sup>207</sup> See *Rhode Island Derelict and Abandoned Vessel and Obstruction Removal Commission*, R.I. DEP'T OF ENV'T MGMT., <http://www.dem.ri.gov/commissions/abvessel.php> (last visited Feb. 8, 2022).

<sup>208</sup> See generally Theresa Nicholson, *Fiberglass Recycling: A Second Life for Old Boats*, BOATUS MAG. (Nov. 2020), <https://www.boatus.com/expert-advice/expert-advice-archive/2020/november/fiberglass-recycling>.

<sup>209</sup> *Environmental Programs*, R.I. MARINE TRADES ASS'N, <http://rimta.org/index.php/environmental-programs/> (last visited Feb. 8, 2022).

<sup>210</sup> *Building a Fiberglass Boat Recycling Program*, NOAA MARINE DEBRIS PROGRAM, <https://marinedebris.noaa.gov/prevention/building-fiberglass-boat-recycling-program> (Feb. 8, 2022, 11:36 PM). The NOAA Marine Debris Program is working on expanding this program to other areas. See *id.*

become ADVs, saving both vessel owners and the Commonwealth money and reducing water quality impacts. A variety of options can be pursued and, with a few changes and improvements, Virginia's ADV program has the potential to become one of the most successful in the country.