April 26, 2016

Item H: Multnomah Channel Petition Request for Rulemaking Boat Operations in Multnomah and Columbia Counties OAR 250-020-0282

.01 The Marine Board received a petition on February 17, 2016, requesting that the Marine Board open rulemaking to amend OAR 250-020-0282 *Boat Operations in Multnomah County on Multnomah Channel* to expand the areas designated as "slow-no wake." The petition was submitted by Timothy R. Larson, an owner of a floating home located on Multnomah Channel.

.02 The Board is required by state law to solicit public comment on a petition that requests an amendment or repeal of an existing rule and to take action on all petitions for rulemaking within 90 days of receiving the petition.

.03 Under ORS 183.390 and OAR 137-001-0070 any interested person can request that the Marine Board adopt, amend, or repeal a boating regulation through a petition. To be considered, petitions must include the following:

a. Name and address of petitioner(s)
b. Names and addresses of other interested parties
c. The proposed language in full (for new rules) or the existing rule language in full with proposed additions and deletions clearly indicated (for rule amendments).
d. An explanation of the petition that includes facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment or repeal of the rule.
e. If the petition requests the amendment or repeal of an existing rule, the petition must also contain comments on:

    A. Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;
    B. The continued need for the existing rule;
    C. The complexity of the existing rule;

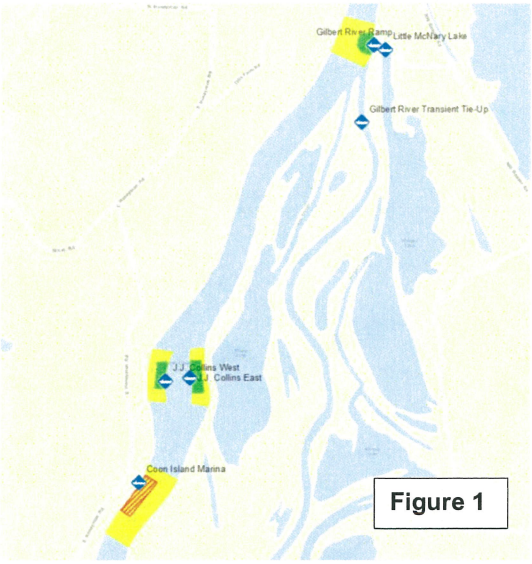
.04 The petition, a request for an amendment to an existing rule, included all required elements (*a* through *e* above) and was accepted by staff.

Background

.01 There are three current rules that affect boat operations on Multnomah Channel. OAR 250-020-0051 *Boat Operations in Columbia County*, adopted by the Board in 1986, sets 200 foot slow-no wake zones around the public short-term tie up docks on Coon Island and the public boat launch ramp at Gilbert River (see figure 1 on Page 2).

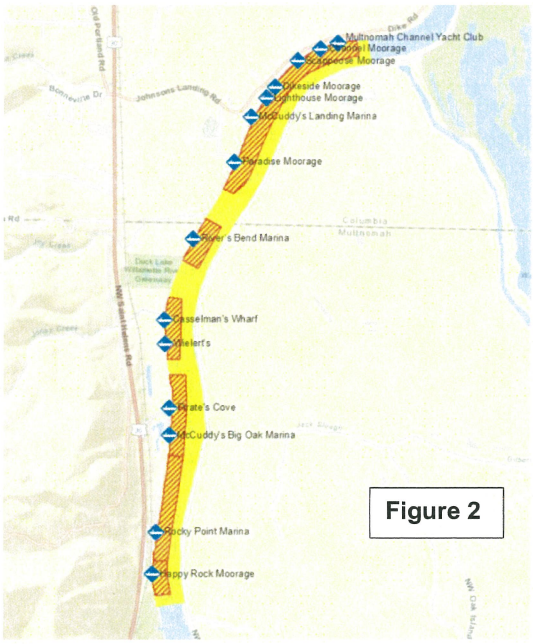
.02 In 1987 the Board adopted 250-020-0282 *Boat Operations in Multnomah County on Multnomah Channel*, the rule that the petition proposes amending, which set a 200 foot slow-no wake zone around boat or floating home moorages between Hadley's Landing and the main Willamette (see figure 2 on Page 2).

.03 The following year, the Board adopted OAR 250-010-0025, *Basic Rule for "Slow-No Wake*. This statewide rule covered all remaining marinas with the capacity for six or more moored vessels, floating home/ boathouse moorages with six or more contiguous structures, and locations where persons are working at water level on floats, logs, or waterway construction (see figure 3 on Page 2).



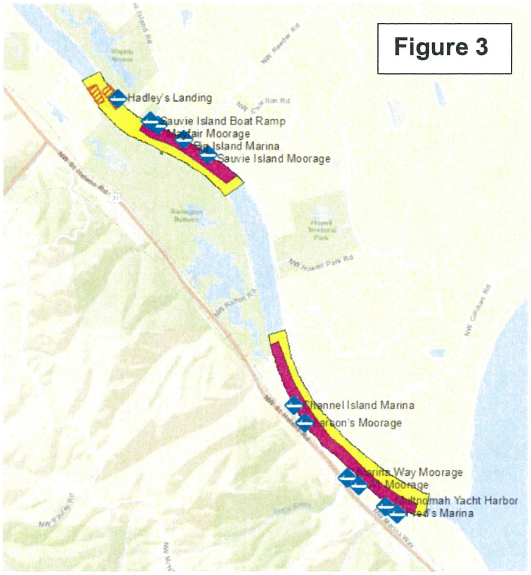
250-020-0051 Boat Operations in Columbia County

(1) No person shall operate a boat in excess of a "slow—no wake" speed in the following areas:
(a) Columbia River. Between Sand Island and the City of St. Helens from a point 200 feet upstream of the Courthouse docks to a point 200 feet downstream of the public transient floats on Sand Island, as marked.
(b) Multnomah Channel. Within 200 feet of the public transient moorage at Coon Island (J.J.Collins Park).
(c) Scappoose Bay. Within 200 feet of Bayport Marina and the public ramp.
(d) Gilbert River, Sauvie Island. Within 200 feet of Gilbert River Boat Ramp and boarding floats and the lower 0.5 mile of the Gilbert River, as posted.
(e) Clatskanie River. Upstream of a point approximately 100 yards north of Beaver Boat Ramp, as marked.
(2) No person shall operate a motorboat except those propelled by electric motors on Lake Vernonia.



250-010-0025 Basic Rule for "Slow–No Wake"

(1) No person shall operate a boat on the waters of this state in excess of a "slow-no wake" speed within 200 feet of a boat launch ramp, marina with a capacity for six or more moored vessels, floating home/boathouse moorage with six or more contiguous structures, and locations where persons are working at water level on floats, logs or waterway construction.
(2) Section (1) of this rule does not apply to commercial vessels or vessels engaged in navigation on rivers where a speed in excess of "slow-no wake" is needed to ensure safe passage.



250-020-0282 Boat Operations in Multnomah County on Multnomah Channel

No person shall operate a motorboat in excess of a "slow-no wake" speed on Multnomah Channel within 200 feet of boat or floating home moorages located between Hadley's Landing (RM 17.5) dock and the main Willamette.

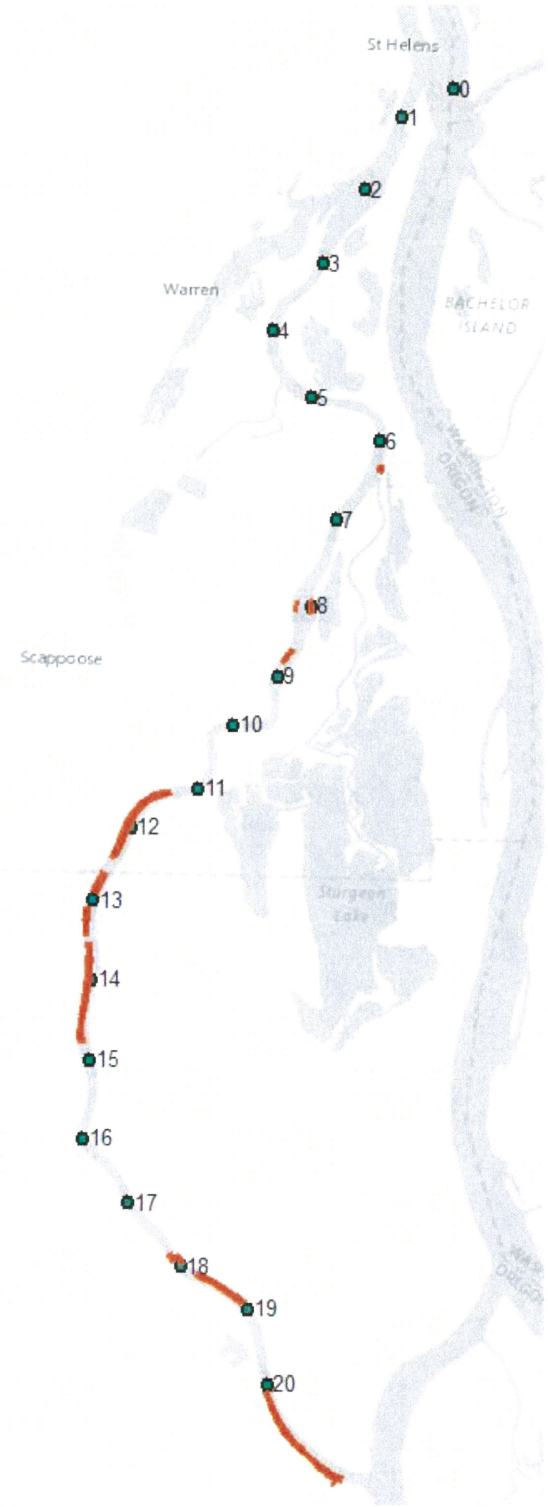
Petition Proposal

No person shall operate a motorboat in [~~excess of a "slow-no wake" speed on Multnomah Channel within 200 feet of boat or floating home moorages located between Hadley's Landing (RM 17.5) dock and the main Willamette.~~] **any manner that creates a wake on Multnomah Channel in any area where there are houseboats, marinas, moorages, parks, or launch ramps. This rule is in effect shore to shore where any of the above are present beginning 500' before arrival at, and ending 500' past any structure, dock, or ramp.**

.04 GIS analysis estimates the acreage of the Multnomah Channel at 1,927 acres of which 283 acres (or 15%) are currently designated as slow-no wake. Approximately 5.4 river miles of the 21 river miles have a slow-no wake zone along either the east or west shoreline.

.05 The 2013 Triennial Survey indicated that boat use is high on the channel and approximately 50% of the activity is fishing and hunting, 47% is cruising, and 3% is watersports.

.06 Multnomah and Columbia County Marine Patrol hours for 2014, 2015 and to date are as follows:



Columbia County

Waterbody	2014	2015	2016
Columbia River	1,379	1,334	272
Multnomah Channel	785	473	182
Scappoose Bay	70	169	40
Gilbert River	34	36	2
Nehalem River	21	35	
Willamette River	100	16	
Clatskanie River	16	8	
Vernonia Millpond	58	5	
Cunningham Slough	5		
Beaver Slough	2		
Columbia Total	**2,469**	**2,076**	**495**

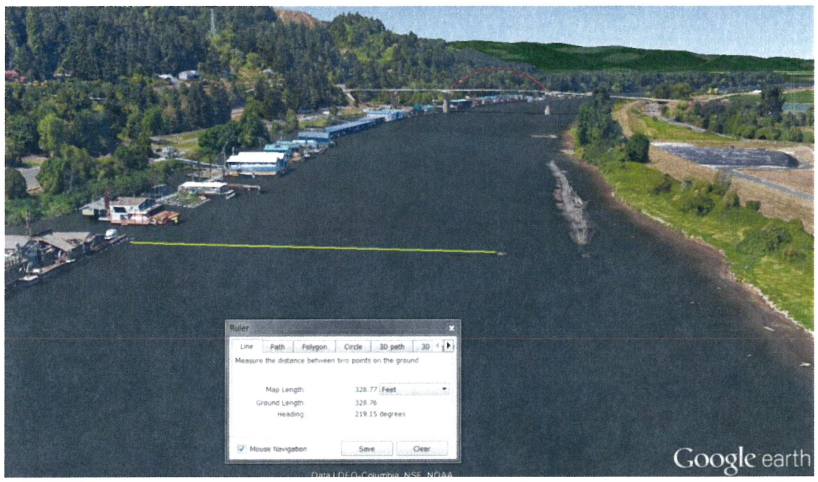
Multnomah County

Waterbody	2014	2015	2016
Willamette River	6,279	5,726	688
Columbia River	5,206	5,374	1,902
Sandy River	179	719	32
Multnomah Channel	369	111	60
Holgate Channel	92	44	6
Columbia Slough	14	9	
Smith & Bybee Lakes		7	
Blue Lake	4	6	
Timothy Lake	42	3	
Gilbert River	16		
Sturgeon Lake	4		
Multnomah Total	**12,204**	**11,997**	**2,687**

.07 On April 8, 2016, Marine Board staff made an observational trip by unmarked (non-law enforcement) boat. From 10 am until 1 pm, staff ran down the channel from the mouth to the Gilbert River boat launch. During the boat trip, staff observed scores of boats engaged in fishing and a handful of boats cruising the channel. Staff took photos and video along the way and made note of the amount of time it took to pass by the slow-no wake areas at cruising speed and at slow-no wake speed.

.08 The upper portion of the channel, from river mile 21.5 to 20, is somewhat restricted because of the large number of piles and dolphins along the northeast shore. There is approximately 300 to 350 feet of open water between the floating homes and the line of dolphins. There are not buoys regularly marking 200 feet from the moorages.

.09 For comparison purposes, the time it would take to pass through this section would be about 3.5 minutes for a boat traveling at a cruising speed of 25 mph, about 18 minutes for a boat traveling at 5 mph, and about 30 minutes for a boat traveling at 3 mph (which could be necessary given the new definition of slow-no wake). Staff did not observe any boats moving on plane. Most boats were moving along outside the slow-no wake zone at 5-10 mph. Staff, going "with the traffic" transited the first set of marinas/ moorages in 9 minutes, outside of the slow-no wake zone, and without creating an unsafe or reckless wake.



.010 The area adjacent to the Sauvie Island moorages is also constricted because of the old piles and dolphins. In this area, the 200 foot zone comes to mid-channel, leaving about 145 feet width available for faster than slow-no wake speed. Staff observed boats going even slower in this section (all were going slow-no wake speed even outside of the 200 foot zone), with another boat even warning staff to "slow down." The length of this stretch is similar to the previous, 1.2 miles, so similar transit times apply.

.011 Further down the channel it gets much wider, with much of the channel having 300 to 350 feet of open water beyond the 200 foot slow-no wake zone. Staff observed all boats present staying outside of the 200 foot zone even though the Marine Board buoys were only 75 to 100 feet from the moorages. Some boats were on plane, others were moving at 7 – 10 mph. This section of the channel, from Happy Rock Moorage to Multnomah Channel Yacht Club (river mile 11.3 to 14.7) is 3.4 miles long. Going down the channel, it took staff 18 minutes to transit this section; boat speed varied from 25 mph to 7 mph. Staff was able to stay 400 to 450 away from the moorages and on plane without creating an unsafe wake.

.012 For comparison, the time it would take to pass through this section would be about 8 minutes for boat traveling at a cruising speed of 25 mph, about 41 minutes for a boat traveling at 5 mph, and about 68 minutes for a boat traveling at 3 mph. Staff did attempt a slow-no wake transit back upstream, and it took about 45 minutes to pass through this section.

.013 Last summer, the Boating Safety program undertook a project to improve the slow-no wake markers for the Multnomah Channel. Staff had 27 old buoys removed and 23 new buoys labeled "Slow No Wake within 200 Feet" were installed at a cost of $6,640. This project also included buoy and sign placement (10 buoys, one large floating sign) in North Portland Harbor. The buoys were specially outfitted to resist river current. Staff met with local residents and the barge company to determine suitability of placement.

.014 The Boating Safety program has signed a special emphasis enforcement agreement for Multnomah Channel for the current boating season. Columbia County Marine Patrol will provide 429 hours of patrol beginning in April and continuing through September. Patrol will be conducted Monday-Friday and holidays, and the Marine Patrol will also monitor and maintain waterway markers. The patrol boat will be moored in the Channel for visibility. Funds are being provided from the Boating Safety ($10,000) and Outfitter Guide ($3,985.40) programs. Patrols have already begun and two citations for slow-no wake violations have been issued this month.

Summary of Petition

.01 The petition requests that OAR 250-020-0282 be amended as follows:

250-020-0282 Boat Operations in Multnomah [~~County~~] <u>and Columbia Counties</u> on Multnomah Channel

No person shall operate a motorboat in [~~excess of a "slow-no wake" speed on Multnomah Channel within 200 feet of boat or floating home moorages located between Hadley's Landing (RM 17.5) dock and the main Willamette.~~] **<u>any manner that creates a wake on Multnomah Channel in any area where there are houseboats, marinas, moorages, parks, or launch ramps. This rule is in effect shore to shore where any of the above are present beginning 500' before arrival at, and ending 500' past any structure, dock, or ramp.</u>**

.02 The petitioner stated that the need for the rule amendment is a result of new technology and equipment with the ability to create damaging wakes that did not exist when the current regulation were adopted. More than 140 individuals signed the petition in agreement.

Public Comment

.01 OSMB sought public comment from March 7, 2016 until April 14, 2016. In addition to sending notice to the interested parties list, notice was sent to Oregon Department of Fish and Wildlife, Oregon Department of State Lands, the Port of St. Helens, Multnomah County Sheriff's Office, Columbia County Sheriff's Office, Oregon State Police, the OSMB Guide Advisory Committee, Senator Betsy Johnson and Representative Brad Witt.

.02 Coverage was provided by The Oregonian, the Northwest Sportfishing Industry Association and various industry Facebook pages. The petition was also discussed on the ifish Blog.

.03 During the open comment period, more than 245 public comments were received by email and letter.

.04 The Marine Board held a public meeting on April 14, 2016, in Scappoose, Oregon. Ninety-seven people signed the attendance roster. Ten additional written comments were submitted during the hearing. A statement of opposition with 56 signatures was submitted.

.05 No comments were received from state agencies or the Columbia or Multnomah County Sheriff's Offices.

.06 Comments in favor of the rule cited the lack of enforcement with the current rule, the increase in boaters violating the rules, and examples of damage occurring to boats and floating homes from boat wakes.

.07 Comments opposed to the rule mentioned the severe impact shore-to-shore slow-no wake zones would have on the transit time through the channel, remarks that different types of boats make different types of wakes, and observations that it is only a small minority of boaters that create wake problems.

.08 Commenters held the opinion that the current laws were adequate. The majority of commenters who opposed the petition identified themselves as anglers and remarked that their type of boat made a minimal wake on plane, but that the petition proposal would make it difficult for them to fish. Commenters also claimed that the petition proposal would negatively impact small businesses including marinas, fuel docks, and restaurants on the channel, outfitter guide businesses, and fishing boat manufacturers.

.09 Many alternative proposals were listed in the comments including: placing an upper speed limit on the channel, tailoring a rule to limit the wakes created by larger displacement type hulls, increasing boater education, installing more buoys and signs, a public media "slow-no wake" campaign, designating watersports activity areas away from moorages, and – overwhelmingly – a suggestion for more enforcement of the current laws: slow-no wake, unsafe operation, and reckless operation.

Options

The Marine Board may direct staff to initiate the rulemaking process or deny the petition.

Analysis

.01 Under ORS 183.370, in reviewing a petition that requests an amendment or repeal of an existing rule an agency must consider:

a. The continued need for the rule;
b. The nature of complaints or comments received concerning the rule from the public;
c. The complexity of the rule;
d. The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;
e. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
f. The statutory citation or legal basis for the rule.

.02 **The continued need for the rule**: The Board recognized in 1988 the state-wide need for slow-no wake zones around marinas, floating home moorages, public boat launch ramps. Boat wakes large enough to move boats, docks or structures can be a safety hazard and can damage property, therefore a continued need exists for a buffer zone around these types of shoreline development.

.03 **The nature of complaints or comments received concerning the rule from the public:** The Multnomah Channel has a high concentration of floating homes and supports many boating activities including a major fishery. The nature of the complaints or comments presented during the public process are summarized as:

a. Wake complaints on the Channel are a perennial issue and cause structural damage;
b. Lack of enforcement;
c. Lack of education/ boater knowledge of the slow-no wake zones; and
d. The ability to traverse the Channel within a reasonable time frame will be adversely impacted by a shore-to-shore, slow-no wake rule.

.04 **The complexity of the rule:** The slow-no wake zone described in OAR 250-020-0282 is not overly complex or functionally any different than the hundreds of other slow-no wake zones throughout the state. The vast majority of these zones are set to be 200 feet from a shoreline or structure.

.05 **The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations:** The rule under petition, OAR 250-020-0282, does duplicate the effect of the state-wide basic rule, 250-010-0025; however, it predates the state-wide rule by a year. When the state-wide rule was adopted, the Board did not repeal all the local and special slow-no wake rules that became duplicative.[1]

.06 **The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule:** The petitioner asserts that the only reason the amendment to the rule is needed is because of new technology and equipment that has the ability to create wakes that didn't exist when the current regulations were adopted (late 1980s). While it may be true that wake board type boats and activities that relied on enhanced wakes (wake boarding, wake surfing) were not really a factor in the 1980s, certainly other types of boats, namely large cruisers (over 27 feet in length) and waterskiing have been popular since the 1950s. Almost any boat has the potential of creating a damaging wake, and the critical factor is the manner in which the boat is operated.

.07 **The statutory citation or legal basis for the rule: ORS 830.175 Regulations for specific areas; rules.** (1) The State Marine Board, upon consideration of the size of a body of water and traffic conditions, may make special regulations consistent with the safety and the property rights of the public or when traffic conditions become such as to create excessive congestion, relating to the operation of boats in any waters within the territorial limits of any political subdivision of this state. The regulations may include, but need not be limited to, the establishment of designated speeds, the prohibition of the use of motorboats and the designation of areas and times for testing racing motorboats.

Staff Recommendation

Staff recommends the Board deny the petition to initiate rulemaking at this time.

[1] One possible advantage to keeping the local and special (Division 20) slow-no wake zones is that the specific local rules are adopted under the authority of ORS 830.175, whereas the statewide rule is adopted under the authority of ORS 830.110. The penalties for violations of both statutes are Class B violations; however, ORS 830.175(6) further states that "Any speeds in excess of the speeds designated by the board, as provided in this section, shall be prima facie evidence of the violation of ORS 830.315" [Reckless Operation]. Although it may streamline Marine Board rules to repeal all the local and special slow-no wake zones that are now covered by the statewide basic rule, the Board may want to research the enforcement implications of such an action.