

Minutes are posted as draft until approved by the Marine Board at its next regularly scheduled meeting.



Meeting Minutes
Oregon State Marine Board
April 26, 2016
Salem, Oregon

Board Meeting – April 26, 2016

Chair Val Early called the April 2016 meeting of the Oregon State Marine Board to order at 9:00 am.

Board Members present: Brian Carroll, Val Early, Cliff Jett, Jas Adams and Jen Tonneson

Staff Present: Director Scott Brewen, Janine Belleque, Rachel Graham, Ashley Massey, Randy Henry and June LeTarte

Approval of Minutes:

Chair Early asked for a review and approval of the January 6, 2016 and the March 29, 2016 meeting minutes. Mr. Jett made a motion to approve the minutes of both meetings. Ms. Tonneson seconded the motion. Motion passed unanimously.

Public Comment:

No public comment.

Chair Early welcomed the audience and announced changes to the agenda item order. The Board will consider items requiring Board action prior to accepting staff reports.

Item A: Director's Report

Director Brewen distributed a copy of "The Balanced Scorecard" and announced his intention to present the Director's Report as a higher-level overview and assessment of the current state of the agency. The four key reporting areas will be: Financial Stewardship; Internal Business; Organization Capacity and the agency's Internal Business Process. Each area will be assessed on its strengths, weaknesses, opportunities and potential threats. The Board was very receptive and looks forward to the new informational format.

Ashley Massey, Public Information Specialist, said that tomorrow, April 27, she will be participating in a media outreach tour highlighting a water safety message. In addition, the agency will be celebrating the "Wear Your Lifejacket" campaign on May 19, 2016.

Item B: Consideration of Rulemaking for Chapter 250 Division 011 – Steering and Sailing Rules

Director Brewen requested the Board's authority to initiate rulemaking to address steering and sailing right-of-way responsibilities, ensure consistency between state and federal laws and remove conflicting language. Temporary rulemaking will be filed until the permanent rulemaking process is complete. Mr. Carroll made a motion to initiate permanent rulemaking in Chapter 250 Division 011, and file temporary rules, as presented. Mr. Adams seconded the motion. Motion passed unanimously.

Item F: Consideration of Rulemaking for Insurance and Duplication Fees 250-010-0057 and Refunds 250-010-0058

Rachel Graham, Environmental and Policy Manager, requested the Board's authority to initiate rulemaking to repeal 250-010-0057 which conflicts with Oregon Revised Statute and amend the overpayment refund language in 250-010-0058. Mr. Jett made a motion to initiate rulemaking, as presented. Ms. Tonneson seconded the motion. Motion passed unanimously.

Item G: Consideration of Kinney Lake Petition Request for Rulemaking Wallowa County OAR 250-020-0340

Rachel Graham requested the Board's authority to initiate rulemaking to amend 250-020-0340 to prohibit the use of motorboats on Kinney Lake in Wallowa County. This petition for rulemaking was requested by the Oregon Department of Fish and Wildlife. Mr. Jett made a motion to initiate rulemaking, as presented. Mr. Carroll seconded the motion. Motion passed unanimously.

Item L: Consideration of Rulemaking for Chapter 250 Division 016 – Outfitter/Guide Registration

Randy Henry, Boating Safety Manager, requested the Board's authority to initiate rulemaking to adopt, repeal and amend rules in Division 016 Outfitter/Guide Registration. This rulemaking will implement the agency's authority to levy civil penalties and simplify the application requirements. Mr. Jett made a motion to initiate rulemaking, as presented. Ms. Tonneson seconded the motion. Motion passed unanimously.

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

Rachel Graham briefed the Board. Law enforcement has begun special emphasis enforcement in the Multnomah Channel. There is a large enforcement presence on the Channel and as of yesterday, sixteen citations were issued and nearly 200 boating reports completed. Facility staff were at the Sauvie Island and the Gilbert River ramps last week and reported viewing no disconcerting behavior. Though, Ms. Graham acknowledged, it is the wrong time of year to observe wake boats and water skiers as described in the petition.

Mr. Adams asked what areas would be included within the proposed zone which are not presently covered in rule. Ms. Graham responded that the petition proposes an exclusion of 500 feet before and 500 after any structure, dock or ramp. Current statewide rule doesn't use the terminology "structure or dock". If the rulemaking process moves forward, Ms. Graham can't confirm this terminology would be used nor is she certain where all the stand-alone docks are located within the channel.

Currently, marinas and public boats ramps are covered under the basic existing slow-no wake rule, within 200 feet. The new definition of slow-no wake, no longer references a speed; rather, operating a boat at the slowest speed necessary to maintain steerage and that reduces or eliminates waves that appear as white water behind the boat.

Mr. Jett commented that in the narrowest part of the channel there isn't 500 feet available. Ms. Graham agreed and said that the most constricted area is around the moorages on Sauvie Island. While not unique, a 500 foot rule would be contrary to the state wide rule.

Mr. Carroll asked, with education, will the situation likely improve. Ms. Graham said yes, with slow-no wake education and increased enforcement. Mr. Carroll said that there should be a conversation with the Department of State Lands; when new structures go in, there should be a boom or wave attenuators installed.

Mr. Henry briefed the Board on the special emphasis enforcement agreement for the area. Mr. Jett asked if the number of boater contacts-made will be collected within the report statistics. Mr. Henry said no. Chair Early asked that the reports be forwarded to the Board for review.

Ms. Tonneson voiced concern regarding the overall drop in patrol hours on the Channel by Multnomah County; their patrol was virtually non-existent even though this area of concern was discussed last year. Ms. Tonneson asked what relief or patrol presence can the agency provide the petitioners other than “we hope” there will be law enforcement. Mr. Henry said he would pay more attention to the weekly and monthly numbers but sometimes boating priorities occur elsewhere.

Mr. Adams asked what percent of the comments received focused on the lack of law enforcement. Ms. Graham responded an estimated 90% of the commenters mentioned a lack of law enforcement in the area regardless if they favored or were against the petition. Chair Early added; most written commenters said that if the current rules were enforced there wouldn't be a need for the petition.

Mr. Jett made a motion to accept the staff's recommendation and instructed staff to provide the Board with an in-depth law enforcement report at both the June and October 2016 meeting. Also, staff will contact Multnomah and Columbia counties and get more law enforcement presence on the Channel. Mr. Carroll seconded the motion.

Ms. Tonneson said the need for education and law enforcement presence were universally repeated during the public hearing in Scappoose. She thought a particular group of boaters were targeted while other boaters doing egregious violations were ignored. Education needs to be added as another contingency. More outreach by the agency may help quell the issue. The agency needs to be proactive and provide educational information at the boat ramps.

Mr. Adams asked if there was an opportunity for increased enforcement by Multnomah County. Can the agency “make them” do more and control the degree of law enforcement? Mr. Henry said that in the contract there is an expectation of a certain number of hours for a certain amount of money.

Mr. Adams sees a problem with the lack of law enforcement in the Multnomah Channel. Director Brewen elaborated. The agency works with the counties to identify the waterbodies with boating issues versus mandating a specific number of hours on a specific waterbody. It's a balance of targeted enforcement and priorities.

Ms. Tonneson agreed and noted that Holgate Channel is also experiencing problems due to a lack of enforcement. Ms. Tonneson asked whether the agency will be able to direct some funds to the Multnomah Channel this summer for extra patrol. Mr. Henry said yes, beginning in April through September, and that he is working with the Coast Guard Auxiliary to distribute educational information.

Chair Early asked for a roll-call vote on the motion.

Brian Carroll – Aye
Jas Adams – Aye
Val Early – Aye
Cliff Jett – Aye
Jenn Tonneson – No

Motion passed. The petition requesting rulemaking was denied.

Item K: Grant Requests

Ms. Belleque, Facilities Boating Manager, updated the Board on additional submitted FEMA requests at Port of Brookings, Yamhill County Dayton ramp and at Klamath Lake. FEMA has accepted the Port of Alsea's dredging project claim.

Grant Request 1534 – Oregon State Parks and Recreation Schwitter Landing Debris Boom Replacement

Darrell Monk, Project Manager, was present.

Staff recommended that the Board amend Facility Grant 1534 in the amount \$185,000 in federal Boating Infrastructure Grant (BIG) funds to match \$160,000 of applicant cash and \$500 administrative services for a total project cost of \$335,500.

Mr. Jett made a motion to approve the grant, as presented. Ms. Tonneson seconded the motion. Motion passed unanimously.

Grant Request 1550 – City of Tillamook Carnahan Park Boarding Dock Replacement and Security Camera Installation

Tim Lyda and Kate Laxson, Public Works, were present.

Staff recommended that the Board authorize Facility Grant 1550 in the amount of \$213,750 state boater funds to match \$71,250 of applicant cash. The City of Tillamook will provide administration, contracting and oversight of the project.

Ms. Early made a motion to approve the grant, as presented. Mr. Adams seconded the motion. Motion passed unanimously.

Grant Request 1555 – Lincoln County Public Works Knight Park, Restroom Replacement and Parking Area Repair

Keith Andresen, Parks Operation Supervisor, was present.

Staff recommended that the Board authorize Facility Grant 1555 in the amount of \$63,350 state boater funds to match \$14,650 of applicant cash, \$8,500 force account labor and equipment and \$5,000 administration, contracting and oversight of the project.

Mr. Carroll made a motion to approve the grant, as presented. Mr. Jett seconded the motion. Motion passed unanimously.

Grant Request 1556 – Port of Cascade Locks Ramp Toe Extension

Staff recommended that the Board authorize Facility Grant 1556 in the amount of \$18,750 state boater funds to match \$2,500 of applicant cash, \$3,070 in pre-agreement permitting expenses and \$680 administration, contracting and oversight of the project for a total project cost of \$25,000.

Mr. Jett made a motion to approve the grant, as presented. Ms. Tonneson seconded the motion. Motion passed unanimously.

**Grant Request 1557 – Douglas County Parks Department
Amacher Park, Ramp Toe Replacement**

Staff recommended that the Board authorize Facility Grant 1557 in the amount of \$25,000 state boater funds to match \$2,500 of applicant cash to repair the boat ramp for a total project cost of \$50,000.

Mr. Jett made a motion to approve the grant, as presented. Ms. Tonneson seconded the motion. Motion passed unanimously.

**Grant Request 1558 – Oregon Youth Conservation Corp (OYCC)
Summer 2016 Youth Crews**

Doug Denning, Director, was present.

Staff recommended that the Board authorize Facility Grant 1558 in the amount of \$31,515 state boater funds to match \$31,199 of applicant cash, materials, equipment and administration to fund three OYCC crews in Clackamas, Josephine and Lane Counties for a total project cost of \$69,714.

Chair Early requested to be informed when the Josephine County project is underway.

Mr. Jett made a motion to approve the grant, as presented. Mr. Adams seconded the motion. Motion passed unanimously.

Item C: Registration Program Report

Janess Eilers, Program Manager, briefed the Board as outlined within the staff report. To date, there have been 2,000 online renewals. No Board action required.

Item D: Business Services Program Report

Kristin Nopp, Business Services Fiscal Analyst, presented the staff report. No Board action required.

Item E: Boating Safety Program Report

Randy Henry, Program Manager, briefed the Board as outlined within the staff report. Mr. Henry announced another fatality occurred April 18, 2016, on the Salmon River. The concept of mandatory lifejacket wear for recreational boaters was discussed. Ms. Graham mentioned that this issue was also discussed at the recent Strategic Planning Meeting. No Board action required.

Item I: Policy and Environmental Program Report

Rachel Graham, Program Manager, briefed the Board as outlined within the staff report. Ms. Graham announced three additional Aquatic Invasive Species (AIS) enforcements on vessels from Lake Mead. The concept of interstate commercial hauler AIS enforcement was discussed.

Ms. Graham confirmed that the Department of State Lands has begun enforcement of a 30-day trespass notice for transient boaters.

Ms. Tonneson asked what is being done, legislatively, to increase the fund for the removal of abandoned boats. Ms. Graham responded; as funding spent on the removal of abandon fishing vessels impacts the funding available for removal of abandoned recreational vessels, the agency has formed a Commercial Vessel Task Force. Members of the task force include ports, law enforcement, environmental groups and members from the fishing commissions. The task force will be collecting data, developing an inventory and formulating funding concepts to address removal of abandoned commercial fishing vessels. The task force plans to finalize its report by summer of next year. No Board action required.

Ms. Graham distributed a handout outlining the Board's two types of public comment periods: petitions and rulemakings. Chair Early asked the Board to review the documentation and be prepared to discuss and provide direction to staff at the next meeting.

Item J: Boating Facilities Program Report

Janine Belleque, Program Manager, briefed the Board and provided project updates. The Oscar Lange, Mack's Canyon, Boat Ramp dedication on the Deschutes River will be held June 3, 2016. Cliff Jett will attend and represent the Board.

Other Business:

The next Board Meeting will be held June 27 and 28, 2016. Attendance at the tour date of June 27 is optional. The meeting will be on Tuesday, June 28, 2016. Location will be announced, when finalized.

The meeting adjourned at 11:53 am.

June 28, 2016

Item A: Director's Report

2017 Legislation

01. During the March 29, 2016 Board meeting, the Board approved forwarding Legislative Concepts (LC) for the Non-Motorized Program and changes to the AIS program. The Legislative Concepts were submitted to DAS and the Governor's Office for review.
02. The LC's have been approved and sent to the legislature for bill drafting. Initial work on the drafts will occur with Legislative Counsel prior to the Board meeting.

2017-2019 Budget

01. The budget picture looks good for the coming biennium. There should be adequate funds available to cover budgeted items provided registered boat numbers remain steady.
02. Specifics will be presented during the Board meeting.

2017-2022 Strategic Plan

01. The action items proposed by the BOATs teams for the Strategic Plan for 2017-2022 have been formatted into Courses of Actions (CoA's) with specific assigned goals for each.
02. Once the plan is vetted through the public and the BOATs teams, it will be submitted to the Board for approval. The CoA's for this plan are very aggressive, so a conversation will have to occur at some point to determine which CoA's should be moved forward into the plan.

Board Representation on BOATs

01. During the Strategic Planning session, one idea that was popular and moved through the process was to request that a Board member serve with each BOAT and to some degree help represent that BOAT with the Board. This is similar to the Champion role that Board members had with each Strategic Plan process.
02. One option would be to rotate Board members each year. This could be done at the June meeting, along with voting in the Chair, each of the other Board members would be selected to serve on a BOAT.
03. Any guidance that you have would be appreciated. This does not require a vote.

Public Information

Date	Press Release	MP3 Audio File
JUNE		
06/15/2016	Mack's Canyon Campground Now Provides All Boaters Access 🗨️	
06/14/2016	Law Enforcement Drift Boat Training Set for the Rogue 🗨️	
06/06/2016	Dredging Project Improves Boating Access at Scappoose Bay Marine Park 🗨️	
MAY		
05/26/16	IOBG Nautical Safety Foundation Delivers Over 500 Life Jackets to Loaner Stations -Teams Up with US Distributing 🗨️	
05/09/2016	The Legal Requirements of Boating 🗨️	
05/06/2016	Port of Siuslaw Offers Relief to Boaters this Summer 🗨️	
05/06/2016	Protecting our Waterways from Invaders -2015 Annual Report is Out 🗨️	
05/05/2016	Marine Board Seeks Public Comment on Proposed Rulemaking in Jefferson County 🗨️	
05/03/2016	Marine Board Seeks Public Comment on Petition to Prohibit Motors on Chetco River 🗨️	
APRIL		
04/27/2016	Marine Board Approves Grants, Denies Petition for Multnomah Channel 🗨️	
04/20/2016	Abandoned/Derelict Vessel Task Force Meeting April 26 in Newport 🗨️	
04/19/2016	Marine Board Meeting April 26 in Salem 🗨️	



Get news releases via email
 Sign up for Boat Oregon News



Media Outreach

- .01 Staff partnered with the U.S. Army Corps of Engineers for a KGW morning segment with Drew Carney to kick off National Safe Boating Week, with water safety messaging to reflect “Wear Your Life Jacket to Work Day,” and cold water shock. Eight segments aired, with the final segment highlighting the effects of cold water incapacitation and the beginning stages of hypothermia. The audience for KGW’s morning show averages 45,000 people and Carney’s Facebook Live broadcast logged 14,000 views. <http://www.kgw.com/entertainment/television/programs/sunrise/national-safe-boating-week-kicks-off-saturday/204167173>.
- .02 Staff is preparing for the next round of boating safety messaging targeted at drinking boaters with Operation Dry Water, being conducted nationwide June 24-26, 2016.
- .03 Additional media materials have been created in preparation for low water levels as summer progresses. Low summer flows offer new challenges to boaters with strong current in some areas that may lead less maneuverable craft into obstructions. More emphasis will be placed on standup paddleboards and the use of leashes, tethers and ropes being waterway-specific, in addition to the life jacket and whistle equipment requirements.
- .04 Staff partnered with the Bend Parks and Recreation Department on messaging and participated in a safety video for the Bend Whitewater Parks. Staff spoke about equipment requirements and water safety. Representatives from many partnering agencies also participated in the video. The video distribution and timeline have yet to be determined.

June 28, 2016

Oregon State Marine Board

Agency Scorecard



Overview – The agency is financially solid with adequate cash flows for the coming biennium. Issues with processing registrations at the beginning of the year have been addressed, and revenues are coming in at a steady pace. Federal revenues from the Coast Guard are about \$54k higher than last year. Expenditures are within the levels anticipated for this point in the biennium, with the exception of Abandoned and Derelict Boat Fund, in which expenditures are significantly higher than previous years.

Strengths – Registration numbers appear steady; Sport Fish Restoration and Boating Trust Fund is sound and reauthorized until 2020; new LE allocation formula has general approval from sheriffs.

Weaknesses – Abandoned and Derelict Boat Fund is fully allocated; current other fund revenues will not be adequate through 2021; AIS revenues will be slightly underfunded in 2017-19 without passage of the AIS LC.

Opportunities – Potential increase to the fuel tax in 2017 session; the Non-Motorized Program LC and AIS LC will provide additional revenues.

Threats – Many unknowns with upcoming elections.



Overview – The registration system work tickets continue to be resolved and staff are getting more comfortable working in the system. The system is at its best when boaters use RegLine because it greatly reduces staff time. Titles are still behind by as many as four months. Improved processes for Abandoned and Derelict Vessels have put a greater strain on this fund. In particular, work needs to be done with regard to commercial vessels, which represent a quadruple cost to remove. The new website is a significant improvement for boaters and other stakeholders. A recent IT audit identified areas for improvement for the agency.

Strengths – Business Services financial operations; Boating Facility Grants; Boating Safety Contract Management and process to allocate special emphasis funds; New website should make it easier for customers to find information about OSMB.

Weaknesses – Title transfers are still behind. IT processes need attention.

Opportunities – Increased usage of RegLine by boaters will reduce staff workload. New email system in July, new VOIP phones in October, change from Novell platform to Microsoft fall 2016.

Threats – BOATS had unanticipated issues that past year, so uncertainties still exist.



Organizational
Capacity
"Knowledge and
Innovation"

Overview – Organizational capacity is high. Staff are well trained, energetic and continuing to innovate. Sections are working well with one another to address agency-wide issues. Work continues to be accomplished with the boating access map, and more great ideas continue to be generated on how best to create a mobile app. The BOATs are a great way to obtain information from boaters, to identify innovative ideas, and to explore better ways to do business. Boating accidents and fatalities are up this year, which causes concerns about where resources are being used.

Strengths – Boat Oregon Advisory Teams (BOATs); current staffing; staff focus on innovation and process improvement; sharing across sections.

Weaknesses – Two – three employees (management or staff level) may be retiring within the next one – two years.

Opportunities – Using GIS for the Boating Access Map; one additional position will be requested in the budget to make the LD in Outfitters and Guides permanent, but another staff member may be necessary in Registration.

Threats – Difficult to add positions.

Customer/Stakeholder
"Satisfaction"

Overview – This past registration cycle and the continued backlog of title transfers impacts individual customers. The fee increase has also resulted in unhappy customers. Both of these issues should be short-lived. However, the need for customers to use the online storefront is significant for BOATS to operate efficiently without adding additional staff. Some people get very frustrated in trying to use the online system.

Strengths – Services provided to boaters continue to be at a very high level; great work with partners for boating access and boating safety services; improved relationships with other government agencies has enhanced the ability to deliver services to customers.

Weaknesses – Boaters have been less than excited to embrace new technology, and in the same regard, the new technology has not made the job easier for OSMB; title backlogs continue to be a problem; accidents and fatalities are up this year.

Opportunities – Technology can help deliver better services, such as the Boating Access Map and the new website.

Threats – Costs to OSMB continue to rise; DAS assessment costs continue to go up as do personnel costs for sheriff's deputies, construction costs, costs to remove derelict vessels, etc.; fee increase allows OSMB to provide nearly the same level of service, but not at an increased level; inattention on the water is an increasing problem among boat operators.

June 28, 2016

Item B: Consideration of Rulemaking for Chapter 250 Division 011 Steering and Sailing Rules

01. OAR 250-11-0050 ((5)(a), 250-11-0060 (4) and (5) include sailing rules that are only applicable on “Western Rivers, or waters specified by the Secretary” as defined in USCG COMDTINST M16672.2D.
02. These rules address responsibilities between vessels, right of way, and procedures for safe passage on specified rivers. Since Oregon rivers are not “Western Rivers, or waters specified by the Secretary” as defined in the Inland Navigation Rules, these rules are in conflict on federally navigable waters and should be removed to ensure consistency between state and federal laws.
03. The Board approved temporary rulemaking and the initiation of permanent rulemaking at the April 26, 2016 Board meeting. Staff subsequently drafted rule language consistent with COMDTINST M16672.2D. Temporary rules were filed May 2, 2016.
04. Notice was filed with the Secretary of State and the public comment period was open from June 1, thru June 24, 2016. A public hearing was not scheduled. As of the writing of this report, no written comments have been received.

Staff Recommendation

Staff recommends the Board adopt the draft language as proposed. The rule will be affective upon filing; staff anticipates this will be no later than July 15, 2016.

250-011-0050

Conduct of Vessels in Any Condition of Visibility

(1) Every vessel shall at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

(2) Every vessel shall at all times proceed at a safe speed so that it can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions. In determining a safe speed the following factors shall be among those taken into account by all vessels:

(a) The state of visibility;

(b) The traffic density including concentration of fishing vessels or any other vessels;

(c) The maneuverability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;

(d) At night the presence of background light such as from shore lights or from back scatter of its own lights;

(e) The state of wind, sea, and current, and the proximity of navigational hazards;

(f) The draft in relation to the available depth of water;

(g) The characteristics, efficiency and limitations of the radar equipment;

(h) Any constraints imposed by the radar range scale in use;

(i) The effect on radar detection of the sea state, weather, and other sources of interference;

(j) The possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;

(k) The number, location, and movement of vessels detected by radar; and

(l) The more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

(3) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist. Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects. Assumptions shall not be made on the basis of scanty information, especially scanty radar information. In determining if risk of collision exists the following considerations shall be among those taken into account:

(a) Such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change; and

(b) Such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

(4) Any action taken to avoid collision shall be taken in accordance with OAR 250-011-0050, 250-011-0060, 250-011-0070 and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(a) Any alteration of course or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course or speed should be avoided.

(b) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(c) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(d) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken its [speed or take all way off by stopping or reversing its means of propulsion.

(e) A vessel, which, by any of these rules is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

(A) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by OAR 250-011-0050, 250-011-0060, and 250-011-0070.

(B) A vessel the passage of which is not to be impeded remains fully obliged to comply with OAR 250-011-050, 250-011-0060, and 250-011-0070 when the two vessels are approaching one another so as to involve risk of collision.

(5) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on its starboard side as is safe and practicable:

~~[(a) Notwithstanding section (5) of this rule and OAR 250-011-0060(3), a power-driven vessel operating in narrow channels or fairways on waters of this state, and proceeding downbound with a following current shall have the right of way over an upbound vessel, shall propose the manner and place of passage, and shall initiate the maneuvering signals prescribed by OAR 250-011-0200(1)(a), as appropriate. The vessel proceeding upbound against the current shall hold as necessary to permit safe passing;]~~

~~[(b)]~~ **(a)** A vessel of less than 20 meters in length or a sailing vessel shall not impede the passage of a vessel that can safely navigate only within a narrow channel or fairway;

~~[(c)]~~ **(b)** A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway;

~~[(d)]~~ **(c)** A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within that channel or fairway. The latter vessel shall use the danger signal prescribed in OAR 250-011-0200(4) if in doubt as to the intention of the crossing vessel;

~~[(e)]~~ **(d)** In a narrow channel or fairway when overtaking, the vessel intending to overtake shall indicate its intention by sounding the appropriate signal prescribed in OAR 250-011-0200(3)(a) and(b), and take steps to permit safe passing. The overtaken vessel, if in agreement, shall sound the same signal. If in doubt it shall sound the danger signal prescribed in OAR 250-011-0200(4). This does not relieve the overtaking vessel of its obligation under OAR 250-011-0060(2);

~~[(f)]~~ **(e)** A vessel nearing a bend or an area of a narrow channel or fairway where other vessel may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in OAR 250-011-0200(5);

~~[(g)]~~ **(f)** Every vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

(6) Any vessel approaching, overtaking, being approached, or being overtaken by a moving law enforcement vessel operating with a siren or an illuminated flashing blue light, or any vessel approaching a stationary law enforcement vessel displaying an illuminated blue light, shall:

(a) Immediately slow to a speed sufficient to maintain steerage only, shall alter its course, within its ability, so as not to inhibit or interfere with the operation of the law enforcement vessel, and shall proceed, unless otherwise directed by the operator of the law enforcement vessel, at the reduced speed until beyond the area of operation of the law enforcement vessel;

(b) Notwithstanding the operational requirements of section 6 (a) of this rule, vessels shall not be required to operate in a manner that would endanger or be likely to endanger that craft, other nearby watercraft, or other persons or property.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.335 & 830.340

Hist.:

250-011-0060

Conduct of Vessels in Sight of One Another

(1) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows:

(a) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

(b) When both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward; and

(c) If a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, it shall keep out of the way of the other;

(d) For the purpose of this section the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

(2) Notwithstanding anything contained in OAR 250-011-0050 through 250-011-0060 any vessel overtaking any other shall keep out of the way of the vessel being overtaken. A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft its beam; that is, in such a position with reference to the vessel it is overtaking, that at night it would be able to see only the sternlight of that vessel but neither of its sidelights. When a vessel is in any doubt as to whether it is overtaking another, it shall assume that this is the case and act accordingly. Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these rules or relieve it of the duty of keeping clear of the overtaken vessel until it is finally past and clear.

(3) Unless otherwise agreed, when two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter its course to starboard so that each shall pass on the port side of the other. Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night it could see the masthead lights of the other in a line or nearly in a line or both sidelights and by day it observes the corresponding aspect of the other vessel. When a vessel is in any doubt as to whether such a situation exists it shall assume that it does exist and act accordingly.

~~[(4) Notwithstanding section (3) of this rule, a power-driven vessel operating on waters of this state, and proceeding down-bound with a following current shall have the right-of-way over an up-bound vessel, shall propose the manner of passage, and shall initiate the maneuvering signals prescribed by OAR 250-011-0200(1)(a) as appropriate.]~~

~~[(5)]~~ (4) When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on its starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel. ~~[Notwithstanding this section on the waters of this state, a vessel crossing a river shall keep out of the way of a power-driven vessel ascending or descending the river.]~~

~~[(6)]~~ (5) Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

~~[(7)]~~ (6) Where one of two vessels is to keep out of the way, the other shall keep its course and speed:

(a) The latter vessel may, however, take action to avoid collision by its maneuver alone, as soon as it becomes apparent to it that the vessel required to keep out of the way is not taking appropriate action in compliance with these rules;

(b) When, from any cause, the vessel required to keep its course and speed finds itself so close that collision cannot be avoided by the action of the give-way vessel alone, it shall take such action as will best aid to avoid collision. A power-driven vessel which takes action in a crossing situation in accordance with section (7)(a) of this rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on its own port side. This rule does not relieve the give-way vessel of its obligation to keep out of the way.

~~(8)~~ (7) Except where OAR 250-011-0050(5) and section (2) of this rule otherwise require:

(a) A power-driven vessel underway shall keep out of the way of:

- (A) A vessel not under command;
- (B) A vessel restricted in its ability to maneuver;
- (C) A vessel engaged in fishing; and
- (D) A sailing vessel.

(b) A sailing vessel underway shall keep out of the way of:

- (A) A vessel not under command;
- (B) A vessel restricted in its ability to maneuver; and
- (C) A vessel engaged in fishing.

(c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:

- (A) A vessel not under command; and
- (B) A vessel restricted in its ability to maneuver.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110

Hist.:

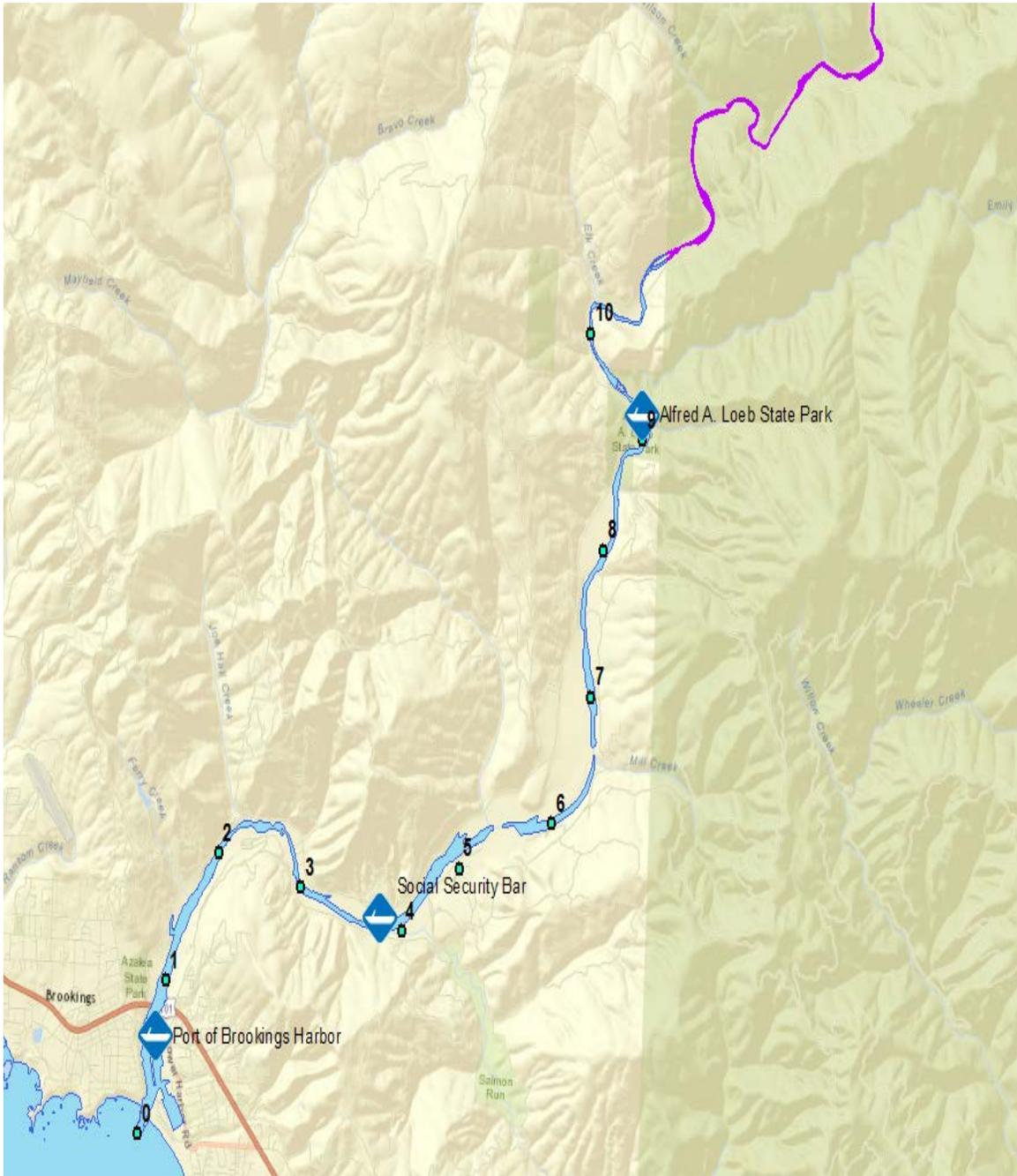
June 28, 2016

Item C: Consideration of Petition for Rulemaking for Boat Operations on the Chetco River in Curry County

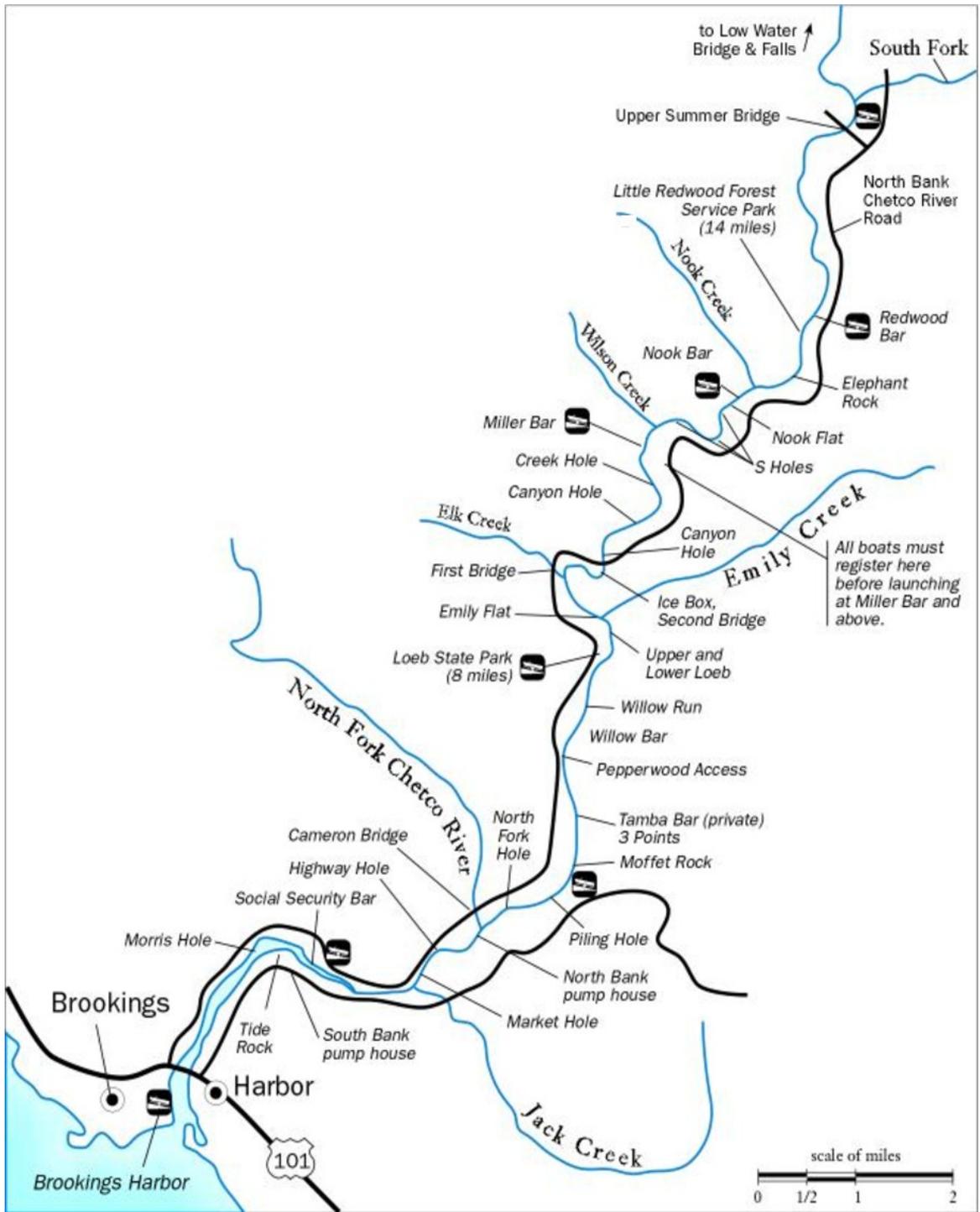
- .01 The Marine Board received a petition on April 7, 2016, requesting adoption of a new rule that would prohibit the use of motors on the Chetco River from the downstream boundary of the National Forest near Miller Bar to the lower water tower located at approximately river mile 3.2 below Social Security Bar. The petition was submitted by nine individuals that identified themselves as private boaters, bank anglers, property owners, and fly fishermen.
- .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 This petition, a request for a new rule, included all required elements (a through d above) and was accepted by staff.

Background

- .01 The Chetco River is 56 miles long, with the upper 45.5 miles designated as Federal Wild and Scenic River. The upper 45.5 miles has been designated non-motorized in the Federal Wild and Scenic rules since 1988 and in OAR since January of this year: OAR 250-030-0170 (adopted as part of the cleanup of the Marine Board Scenic Waterways rules for consistency with federal law).
- .02 The only other boating restriction on the Chetco River is the prohibition on the operation of Personal Watercraft (PWCs) above the head of tide. OAR 250-021-0040(2)(d).



The lower Chetco River. The Wild and Scenic Designation and the motorboat prohibition (purple above), begin at the Rogue Siskiyou National Forest Boundary (land area in green above). River miles shown by green dots.



Map of fishing access from www.wildriversfishing.com

Summary of Petition

- .01 The petition requests that a new rule be promulgated to achieve the following:
“No person shall operate a boat with a motor of any kind while navigating the Chetco River from the downstream boundary of the National Forest near Miller Bar to the lower water tower located at approximately river mile 3.2 below Social Security Bar.”
- .02 The petitioners state the reason for the new rule is to reduce the “highly contentious situation between bank anglers and boat anglers that are focused in the same area.”
- .03 Petitioners noted that the angling pressure has increased significantly in the past few years, a new fishing technique called side drifting has evolved over the last several years, and boat density during the steelhead season is high.

Public Comment

- .01 OSMB sought public comment from May 2, 2016 through June 13, 2016. In addition to sending the Notice of Petition to individuals on the interested parties list, notice was also sent to the Department of Fish and Wildlife, Oregon State Police, the Port of Brookings, Curry County Sheriff’s Office, Curry County Board of Commissioners, the City of Brookings, the Brookings Harbor Chamber of Commerce, and the Oregon Senate and House Representatives for the districts that include Curry County.
- .02 All written comments were provided to the Board members for review.
- .03 The comments in support of the petition were submitted mostly via form letter which supported the proposed rule change as it “strikes a balance between user groups that allows most member of the angling community to share equally in angling opportunity on the river.”
- .04 Further comments in support of the petition noted that previous efforts to work with the user groups, post signs about etiquette, etc., only provided temporary relief. Commenters in favor of the petition noted that prohibiting motorboats would eliminate the offensive behavior (assumed to be side drifting) that was enabled by motorboats.
- .05 Commenters in favor of the petition also noted that a prohibition on the use of motors would be easily enforceable, whereas other regulations, such as guide ethic rules, and “interference with angling” rules were difficult to enforce. Commenters in favor of the petition also argued that prohibiting motors removed no anglers from the river.
- .06 The comments in opposition to the petition generally acknowledge that there is some conflict but felt that a prohibition on motors would not lessen the intensity.
- .07 Many motorized boaters noted that the proposed restriction was aimed at eliminating the “side drifting” behavior, but these commenters explained that boats could (and would) either row or walk their boats back up river to drift again. This could create more conflict if the rowing or walking happened in the calmer water where bank anglers were standing. Also, commenters noted that if they could not use a motor, they would instead anchor in the river.

- .08 Several commenters in opposed to the petition noted that they would not fish the Chetco anymore if motors were prohibited, resulting in a loss of income to the local community. Some commenters noted that because of their age or disability they would not be able to boat on the Chetco without a motor.
- .09 Other commenters in opposed to the petition indicated that there was very little conflict between the user groups, and that the petition was an attempt to gain more exclusive access for fishing.
- .10 In an email dated May 9, 2016, the Oregon Department of Fish and Wildlife commented that there was no fish conservation reason to restrict motorboats and noted that the situation on the Chetco River was a social conflict. No other comments were received from law enforcement, public agencies, or local governments.
- .11 A public meeting was held in Brookings on Monday, June 13, 2016. Thirty-three individuals signed the attendance roster. Twenty people provided oral testimony which was very similar in nature to written comments provided to the Board.

Options

The Marine Board may direct staff to:

- a. deny the petition and take no further action; or
- b. initiate the rulemaking process to consider adoption of the proposal as outlined in the petition.

Analysis

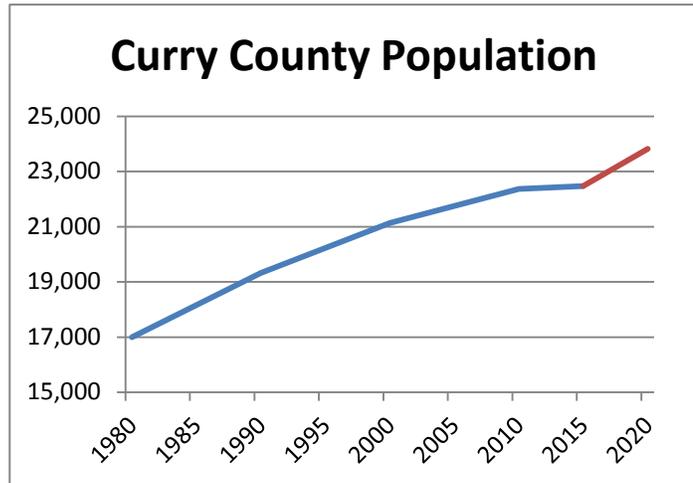
ORS 183.390 does not provide guidance on how an agency should review petitions for the promulgation of new rules. Staff is providing analysis on relevant areas suggested by ORS 183.390 for the review of petitions requesting amendments or repeal of rules:

- a. The nature of complaints or comments received concerning the rule from the public;
 - b. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule;
 - c. The statutory citation or legal basis for the rule (the Board's authority to promulgate rules).
- .01 **The nature of complaints or comments received concerning the rule from the public:**

Staff has concluded based on the evidence presented in the petition and the comments received from the public, that conflict exists between anglers on the Chetco River during the winter steelhead season (January and February), this conflict has been an issue for several years, and possibly is getting worse. The conflict is the result of an increase in the number of anglers on the river, the different (and possibly incompatible) fishing techniques employed by the various anglers, and the perception of equity. A specific behavior – a boat repeatedly drifting through an area where fish were holding – is enabled by the use of motors. Staff concludes that the reason commenters want motors to be prohibited is to discourage this behavior of repeatedly motoring upstream to drift a prime fishing spot over and over. Staff can find no evidence that this particular behavior is a safety concern. Rather, the conflict appears to be more about competition for fish during a certain time of year and in certain locations and less about incompatible boat uses.

.02 **The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule:**

Many commenters noted how conditions on the river had changed in the last few years (or decade): more boats, more people, more competition, shorter tempers. Since 1990, the population of Curry County has increased by 16%, and is forecast to grow another 6% in the next years (Portland State University Population Research Center). It is reasonable to assume that there are more anglers and more boats on the Chetco River from Oregon and from California.



Additionally, changes in fishing regulations in nearby rivers (notably the Smith River) where only hatchery steelhead may be kept, likely put more fishing pressure on the Chetco, where current regulations allow for 1 wild steelhead per day, 5 per year.

Finally, the “side drifting” technique has been noted as somewhat new, and not a practice that was common years ago.

.03 **The statutory citation or legal basis for the rule:**

Prohibitions on motorboats are authorized by the Board’s authority under ORS 830.175(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.”

Further, the Board has the authority to restrict boating to protect traditional boating uses and prevent boater user conflicts under ORS 830.195: “In addition to any other authority to regulate boating activities pursuant to this chapter, the State Marine Board may regulate and restrict boating activities to protect traditional boating uses and to prevent boating user conflicts.”

04. The Board may find some guidance in the rulemaking policy of the Board:

250-001-0050 Policy

- (1) It is the policy of the State Marine Board to promote multiple use and enjoyment of waters of the state for a variety of boating activities. The Board recognizes and will uphold to the extent practicable the universal right of the public to navigate and use the waters of the state for boating.
- (2) The Board is authorized to regulate through administrative rules boating in specific locations or on specific waterways in the interest of protecting public safety, property, water quality, fish and wildlife resources or for the purpose of reducing excessive congestion and conflict between users, and promoting uniformity of laws pertaining to such use.
- (3) The Board will seek to resolve problems arising from or between boating activities on a waterway by using a variety of management measures including education, information, signing, voluntary restrictions or increased law enforcement of existing laws before acting to restrict public use and enjoyment of boats.
- (4) It is the policy of the Board to exercise its regulatory authority based upon sufficient information, public testimony or evidence that establishes a demonstrated need to enact administrative rules.
- (5) The Board will seek the concurrence and recommendations of affected local jurisdictions and authorities before adopting regulations for local waterways.

Staff Conclusion

Staff concludes that expectations regarding acceptable boater behavior, solitude, and fairness in fishing are not being met for many users on the Chetco River for a period of time (January through March winter steelhead season) and in specific areas (Social Security Bar).

However, staff finds no justification for a prohibition on motors based on a safety, congestion, or property rights concern. The river is more crowded than in the past and the conditions that the petitioners seek – a quiet, peaceful, uncrowded experience – is not realistic as long as the fishing on the river is productive and promoted.

Eliminating motorboats on the water will not likely reduce the volume of anglers. This high concentration of fishing may be the result of California fishing restrictions of wild steelhead harvest together with good fish returns on the Chetco River.

The greater portion of the Chetco River, 82%, is already regulated as motorboat prohibited. Users who desire a non-motorized experience do have options available to them.

The proposed prohibition may be an overreaching measure in response to what appears to be a three-month fishing style conflict. Lastly, a prohibition on motor use may negatively impact other recreational purposes/motor uses, other than angling, on the Chetco River.

Staff Recommendation

Staff recommends the Board deny the petition request to open rulemaking to prohibit the use of motors above River Mile 3.2 on the Chetco River in Curry County.

June 28, 2016

Item D: Consideration of Rulemaking for Issuance and Duplication Fees OAR 250-010-0057 and Refunds OAR 250-010-0058

01. OAR 250-010-0057, last amended in 2005, restated the titling fees as they were listed in ORS 830.810 in 2005. Repeating statute in rule is unnecessary and can result (as is the case now) in conflicting rules and statutes. The rule currently states that the original and transfer fees are \$30 and the duplicate fees are \$15 and \$10; however, the legislature amended ORS 830.810 in 2015 to set the original and transfer fee at \$50 and the duplicate fees at \$25 and \$15. Staff filed a temporary rule on April 15, 2016, to repeal OAR 250-010-0057 to eliminate the conflicting fee information, but the Board needs to adopt a permanent rule to permanently fix this rule / statute conflict.
02. OAR 250-010-0058 involves Board procedure in issuing a refund when a customer overpays. The current rule (in effect since 2002) states that overpayments greater than \$7 will be automatically returned to the customer, but overpayment of \$7 or less are not automatically refunded, rather the customer has to request the refund. This practice is allowed under ORS 293.445 when the refund threshold is adopted in rule. Staff requested the threshold for automatic refunds be raised to \$10.
03. The Board approved initiating rulemaking for OAR 250-010-0057 and OAR 250-010-0058 at the April 26, 2016 Board meeting. Notice was filed with the Secretary of State and the public comment period was open from June 1, until June 24, 2016. A public hearing was not scheduled. As of the writing of this report, no comments have been received.

Staff Recommendation

Staff recommends the Board permanently repeal OAR 250-010-0057 and amend OAR 250-020-0058 to raise the automatic refund threshold to \$10. The repeal and amendment will be affective upon filing; staff anticipates this will be no later than July 15, 2016.

June 28, 2016

**Item E: Consideration of Rulemaking for Boat Operations in Jefferson County
OAR 250-020-0340**

- .01 The Marine Board received a petition on October 14, 2015, requesting adoption of a new rule that would restrict mooring or anchoring on all waterbodies in Jefferson County to a maximum of 16-days in one location and would prohibit vessels from being left unattended overnight except in approved marinas and docks. The petition was submitted by Capt. Marc Heckathorn of the Jefferson County Sheriff's Office.
- .02 The Board approved initiating rulemaking to address the issues raised in this petition at the January 6, 2016, Board meeting.
- .03 Staff convened a rulemaking advisory committee to help draft a rule and to complete the fiscal impact statement. The invited rulemaking advisory committee members were:

Name	Affiliation
Jim Cyr	Cove Palisades concessionaire
Larry Porter	houseboat owner on the lake
Karen Child	owner of Cove Corner Store and Rentals
Brett Davies	Lake Billy Chinook Houseboats livery operator
Joe Parrott	Lake Billy Chinook boater
David Slaght	Oregon Recreation and Parks Department
Steve Menninger	Oregon Recreation and Parks Department
Capt. Marc Heckathorn	Jefferson County Sheriff's Office
Tony Dentel	Portland General Electric
Dennis Benson	US Forest Service
Todd Neville	US Bureau of Land Management
Clay Penhollow	Confederated Tribes of Warm Springs

- .04 The advisory committee met on Thursday, March 31, 2016, in Madras. Representatives from the US Forest Service and US BLM were unable to attend the meeting but provided input by phone. The Confederated Tribes of Warm Springs did not respond to several invitations to participate. The advisory committee meeting was very productive and the group was able to reach consensus on the draft rule language.
- .05 Notice was filed with the Secretary of State and the public comment period was open from May 1 until May 31, 2016. In addition, notice was sent to interested parties and local governments and agencies. A public hearing was not scheduled. No comments were received on this rulemaking.

Staff Recommendation

Staff recommends the Board adopt the draft language as proposed. The rule will be affective upon filing; staff anticipates this will be no later than July 15, 2016.

250-020-0161

Boat Operations in Jefferson County

(1) No person shall operate a motorboat for any purpose on the following lakes:

- (a) Scout;
- (b) Round;
- (c) Jack;
- (d) Island;
- (e) Cache;
- (f) Hand and
- (g) Link.

(2) Suttle Lake:

- (a) No water skiing or motorboat operation in excess of 10 MPH to be permitted on Suttle Lake between the hours of 8 p.m. and 9 a.m., standard time, each day;
- (b) No water skiing or motorboat operation in excess of 10 MPH to be permitted on Suttle Lake between the hours of 9 a.m. and 8 p.m., standard time, each day, except within the signed and designated fast boat area, water skier dropoff zone, and water skier take-off lanes, at the west end of the lake;
- (c) Operating any boat which is equipped with a toilet is prohibited on Suttle Lake, unless such toilet has an approved device to render waste harmless, or unless such toilet is rendered inoperative by having the discharge outlet effectively sealed.

(3) Lake Simtustus:

- (a) No person shall operate a motorboat in excess of a "slow—no wake" speed in the area within 300 feet of the moorage and extending to the opposite shore;
- (b) No person shall operate a boat for any reason within the restricted tailrace area enclosed by the log boom approximately 1200 feet down-stream of Round Butte Dam;
- (c) No person shall moor a boat to the log boom or operate a boat for any reason within the restricted intake area enclosed by the log boom located approximately 200 feet upstream of Pelton Dam;
- (d) Boat access in the areas closed by subsections (b) and (c) of this section is permitted for federal, state, local and tribal government agencies and Portland General Electric employees or their agents for official business only.

(4) Lake Billy Chinook:

(a) No person shall operate motorboat in excess of 10 MPH in the following areas:

- (A) On the Crooked River Arm above the Crooked River Bridge.
- (B) On the Deschutes River Arm above the Deschutes River Bridge;
- (C) On the Metolius River Arm from a point approximately 1,000 feet upstream of Street Creek, as marked.

(b) No person shall operate a motorboat in excess of a "slow—no wake" speed within the buoyed areas at:

- (A) Cove Palisades State Park Marina;
- (B) The Crooked River Launching Ramp;
- (C) The Lower Deschutes River Day Use Area;
- (D) The Upper Deschutes River Day Use Area;
- (E) Within 300 feet of a designated swimming area;
- (F) Within a cove at Chinook Island (Metolius Arm) as marked;
- (G) Within the cove at Camp Perry South (Metolius Arm) as marked.

(c) No person shall operate a boat inside the log boom enclosure around Round Butte Dam.

(5) No person shall beach, anchor or moor a boat within 200 feet of shore in the following areas at Lake Billy Chinook between 10 p.m. and 5 a.m.

(a) Crooked River Arm:

(A) East shore — between a point approximately 1,000 feet north of the cove Marina, as marked, and the Crooked River Bridge;

(B) West Shore — From the State Park boundary north approximately 2,000 feet, as marked.

(b) Deschutes Arm: East Shore — Between a point approximately 2,000 feet north of the northernmost boat launch, as marked, and the Deschutes River Bridge;

(c) This prohibition shall not apply to any leased or rented space within established marinas or moorages.

(6) No person shall operate or provide for others to operate a boat on Lake Billy Chinook which is equipped with a marine toilet, unless the toilet has a holding tank or is rendered inoperative so as to prevent any overboard discharge.

(7) Haystack Reservoir. No person shall operate a boat in excess of 5 MPH in the following areas:

(a) In the western cove inside a buoy line approximately 500 feet from shore, as marked;

(b) In the southern cove inside a buoy line extending from south of the boat ramp on the east shore to a point south of the southeast peninsula, as marked.

(8) For all lakes in Jefferson County:

(a) The owner or operator of a boat that has been anchored or moored outside of a marina or away from a dock:

(A) For 30 consecutive days in one location must move the boat to a new location at least one half mile away and must not return to the previously used location for 30 days. For the purpose of this rule, "location" is defined as an area within a 300 foot radius.

(B) Must not leave the boat unattended for more than 7 consecutive days.

(b) Subsection (a) does not apply to a person anchoring or mooring a boat on privately owned submerged or submersible land with the permission of the landowner.

(c) An unattended boat adrift may be considered a "derelict vessel" as defined in ORS 830.908(3) and may be subject to seizure.

June 28, 2016

**Item F: Consideration of Rulemaking for Boat Operations in Wallowa County
OAR 250-020-0340**

- .01 The Marine Board received a petition on February 4, 2016, requesting that the Marine Board open rulemaking to prohibit the use of motorboats on Kinney Lake in Wallowa County. The petition was submitted by Oregon Department of Fish and Wildlife (ODFW), Triple Creek Ranch 1, LLC, and Wallowa Valley Improvement District #1.
- .02 Kinney Lake is a 22 acre irrigation reservoir that is secondarily managed as a public trout fishery. Previously, ODFW prohibited fishing from "floating devices" on Kinney Lake, but ODFW recently changed their rules to allow fishing from boats. However, ODFW, the Wallowa Valley Improvement District, and Triple Creek Ranch requested the Board restrict the use of motorized boats to continue to avoid impacts to the dam.
- .03 The Board approved initiating rulemaking to draft a restriction as proposed by the petition at the April 26, 2016 Board meeting; staff subsequently drafted rule language consistent with motorboat prohibitions on other lakes and reservoirs.
- .04 Notice was filed with the Secretary of State and the public comment period was open from June 1 until June 24, 2016. In addition, notice was sent to interested parties and local governments and agencies. A public hearing was not scheduled. As of the writing of this report, no comments have been received.

Staff Recommendation

Staff recommends the Board adopt the draft language as proposed. The rule will be affective upon filing; staff anticipates this will be no later than July 15, 2016.

**250-020-0340
Boat Operations in Wallowa County**

(1) Wallowa Lake. No person shall operate a boat in excess of 5 MPH within 200 feet from shore along the west side of Wallowa Lake in the area bounded by the county boat ramp on the north and the mouth of the Wallowa River on the south.

EXCEPTION: Boats towing water skiers may exceed 5 MPH on safe take offs and landings. A "safe" take-off or landing is one without risk to any swimmer or craft within 200 feet from shoreline.

(2) Snake River. No person, other than a member of the Department of State [~~Policy~~] **Police**, county sheriff, and governmental agencies of this state and the federal government having jurisdiction over the following described waters, shall use a motor for propelling a boat for any purpose on the Snake River between Wild Sheep Rapid and Kirkwood Historic Ranch without a valid permit from the Hells Canyon National Recreation Area or Wallowa-Whitman National forest.

(3) Grande Ronde River. No person, other than a member of the Oregon State Police, county sheriff, and governmental agencies of this state, and agencies of the federal government having jurisdiction over the following described waters, shall use a motor to propel a boat for any purpose on the Grande Ronde River between the Umatilla National Forest Boundary (1.5 miles below the confluence with the Wallowa River at approximately RM 80) downstream to the Oregon/Washington state line; except for landowner access for land management activities.

(4) No person shall operate a motorboat on Kinney Lake.

June 28, 2016

Item G: Consideration of Rulemaking Boat Operations on the Willamette River in Clackamas County 205-020-0032

01. The Oregon Department of Fish and Wildlife recently adopted (April 22, 1016) a new rule, OAR 635-041-0610 Ceremonial Salmon and Steelhead Harvest at Willamette Falls, that authorizes members of the Grand Ronde Community of Oregon (Tribe) to harvest hatchery salmon and hatchery steelhead at Willamette Falls for ceremonial purposes from the shore or from a single platform erected by the Tribe. Although fishing from a boat is not authorized under in OAR 635-041-0610, the Tribe will have to use a boat to construct and access the fishing platform. Therefore, the Tribe is requesting Marine Board authorization to operate a boat in the area of the Willamette Falls that is currently closed to boating.
02. Staff filed a temporary rule (below) on June 7, 2016 to make a new exception in OAR 250-020-0032 for the Tribe so that they could begin construction of the fishing platform this summer.

250-020-0032

Boat Operations on the Willamette River in Clackamas County

.....

(2) No person shall operate a boat:

(a) Downstream from Oregon City Falls in an area from the base of the falls to a line across the river between the northeast corner of the Crown Zellerbach's Mill A Grinder Room on the west bank of the river to the southwest corner of Publisher's Paper Company Power Plant on the east bank of the river as marked;

(b) In the area commonly known as the "cul-de-sac" or the Simpson Paper Company tailrace; beginning at the mouth of the tailrace on the south bank then extending across the tailrace following the line established by the bridge across the tailrace to the north bank, then in a westerly, southerly, and easterly direction around the bank of the tailrace to the place of beginning.

(c) Exceptions:

(A) Boats of any federal, state, county, or local governmental agency and Portland General Electric Sullivan Plant and Crown Zellerbach Corporation Mill maintenance crews may operate in the closed area when on official business;

(B) Boats used in taking lamprey under a permit issued by the State Department of Fish and Wildlife may operate in the closed area subject to the conditions specified in the permit.

(C) Holders of a Ceremonial Harvest Permit may operate a boat for activities conducted in accordance with OAR 635-041-0610 adopted by the Oregon Department of Fish and Wildlife.

Staff Recommendation

Staff is requesting the Board to initiate the permanent rulemaking process for OAR 250-020-0032 to adopt permanent rule language for the Ceremonial Harvest Permit and to address any applicable housekeeping issues.

June 28, 2016

**Item H: Consideration of Rulemaking Agency Representation by Officer or Employee
OAR 250-001-0035**

01. The Marine Board had a need for administrative rules that permitted agency staff to represent the Attorney General at contested case hearings. The primary purpose of these hearings related to the Outfitter Guide program when the agency proposed to revoke, suspend or deny an outfitter guide license.
02. In a letter dated May 11, 2016, the Department of Justice authorized its consent to allow lay representation from the Marine Board staff in particular hearings or particular classes of hearings in accordance with ORS 183.452 (attached).
03. A temporary rule was filed effective May 12 to document the staff's authority to participate in planned contested case hearings (attached). The temporary rule will expire Oct. 31, 2016.
04. The temporary rule defines the limitations of "agency representation" and does not enable staff to present "legal arguments."
05. Staff met with the Attorney General on June 6 and received procedural training on contested case hearings.

Staff Recommendation

Staff recommends that the Board initiate permanent rulemaking for OAR 250-001-0035. Staff anticipates returning to the Board in October 2016 for rule adoption.



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 11, 2016

SENT VIA EMAIL & SHUTTLE

Scott Brewen, Director
Oregon State Marine Board
435 Commercial Street NE, Suite 400
Salem, Oregon 97301

Re: Agency Lay Representation in Oregon State Marine Board Contested Cases
DOJ File No.: 250001-GA0072-16

Dear Mr. Brewen:

The Attorney General is authorized to consent to lay representation in particular hearings or particular classes of hearings in accordance with ORS 183.452. The Oregon State Marine Board (OSMB) requested authorization for agency representation to conduct the following types of contested case hearings:

1. Outfitter and guide registrations and civil penalties;
2. Charter and livery registrations and certificates; and
3. Boat registration and certificates.

Use of agency representatives during contested case hearings also requires that the agency, by rule, has authorized agency representatives to appear on its behalf in the particular type of hearing being conducted. The agency's rule should align with the authorization granted by the Attorney General and the requirements of ORS 183.452. We rely on the draft rule, identified as OAR 250-001-0035, as the applicable rule that the OSMB intends to adopt for this purpose.

Although some lay representatives have a law degree, they may not act as an attorney for the agency. All lay representatives are prohibited by ORS 183.452(3) from presenting legal argument in contested case hearings or providing legal advice to the OSMB. If a case may require legal argument, an assistant attorney general (AAG) must be assigned to make legal argument for the agency.

By this letter, which supersedes any existing lay representation authorizations for the agency, the Attorney General consents to lay representation of OSMB by its employees in contested case hearings referenced above, within the following parameters:

- a. The agency must maintain the authorized administrative rule that describes the “particular types of hearings” for which lay representation has been authorized and that meet the requirements of ORS 183.452. Please consult your agency’s assigned legal counsel before amending the rule.
- b. The agency must consult with its assigned legal counsel, as early in the case preparation process as possible, if any of the following situations arise: (a) it appears that a case may have a significant impact on the interpretation of state law; (b) it appears that legal issues will be raised in a case; (c) it appears that a hearing may involve an issue beyond the lay representative’s ability or authority; or (d) the agency believes the case is likely to result in an appeal. If any of these situations arise *during a hearing*, the agency must consult with its assigned legal counsel and should request time to do so from the administrative law judge or hearing officer.
- c. The agency must consult with its assigned legal counsel if a party is represented by an attorney or notifies the agency of its intent to call an expert witness, where the involvement of counsel or expert witness indicates that legal issues are likely to be raised. Consultation must also occur if one of the parties to the hearing is another state agency.
- d. The agency must consult with its assigned legal counsel, or other designated DOJ legal counsel for purposes of criminal matters, if it has reason to believe or if it is notified that there is an ongoing criminal investigation or criminal proceeding involving a party which relates to the contested case hearing.
- e. In hearings in which the potential sanction is disqualification from pursuing a profession and that sanction is contested by the party, the agency must consult with its assigned legal counsel to determine whether legal assistance is warranted.
- f. The agency must ensure that its employees who represent the agency at hearings have the necessary skills and knowledge regarding notices, procedures and conduct of hearings, and that they coordinate and consult with other agency lay representatives and with assigned legal counsel as necessary in order to ensure consistency of agency rule interpretation.
- g. The agency must ensure that its employees who represent the agency at hearings review at least once during each biennium the most recent version of the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by DOJ and available on its website at <http://www.doj.state.or.us>. A copy of the most recent code of conduct is attached to this letter.

“Consult with its assigned legal counsel” refers to a timely and meaningful conversation with the agency’s assigned AAG that includes sufficient background information so that the AAG can adequately respond to the particular question or issue presented. Unless impossible, this consultation shall occur at least two weeks before the scheduled hearing.

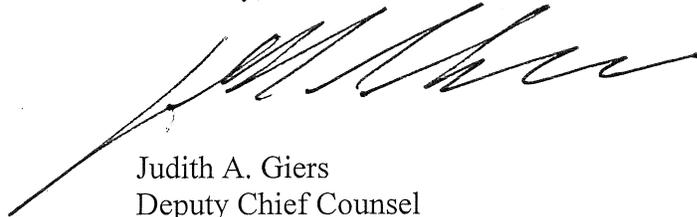
This authorization is subject to revocation if the Attorney General determines that the best interests of the state require that the agency be represented in its contested case proceedings by an AAG. In addition, DOJ may determine that the state's interests require that an AAG represent the agency in a particular hearing.

Consistent with ORS 183.471, non-exempt agencies are required to maintain their final orders in digital searchable format. The agency must confer with its assigned AAG to identify the categories of final orders that may serve as precedents for future agency cases or which would facilitate effective legal consultation and shall provide a digital searchable version of those final orders, when issued, to its assigned AAG.

On a biennial basis, DOJ will request summary information from the Agency about use of lay representation. This request will be made at the end of the biennium (in this case, June 2017) using a format similar to the attached document. We are letting you know in advance, to facilitate your response when you receive the request. In addition, your assigned AAG will meet with your lay representatives on an annual basis to review and discuss the Agency's lay representation program. This meeting is designed to lay the foundation for a productive working relationship between your lay representatives and your assigned AAG,

We would like to schedule our first meeting in June 2016 and anticipate the meeting to last approximately 1 – 1 ½ hours. Please have the appropriate person contact Nichole Waldner at (503) 947-4462 or nichole.waldner@doj.state.or.us to schedule.

Sincerely,



Judith A. Giers
Deputy Chief Counsel
General Counsel Division

JAG:naw/DM7378839

Attachments

- c: Paul Garrahan, AIC, Natural Resources Section (w/attachments)
- Renee Moulun, AAIC, Natural Resources Section (w/attachments)
- Matt DeVore, AAG, Natural Resources Section (w/attachments)

250-001-0035

Agency Representation by Officer or Employee

(1) A Marine Board employee is authorized to appear on behalf of the Board in a hearing or in a class of contested hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation.

(2) The contested case hearings for which the Attorney General has given its consent for the Marine Board to act as a representative of the agency are outfitted/guide, charter/livery and boat registration.

(3) The agency representative may not make legal argument on behalf of the agency.

(4) "Legal argument" as used in ORS 183.450(8) and this rule shall include arguments on:

(a) The jurisdiction of the agency to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(c) The application of court precedent to the facts of the particular contested case proceeding.

(5) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(a) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(b) Comparison of prior actions of the agency in handling similar situations;

(c) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(d) The admissibility of evidence or the correctness of procedures being followed.

(6) When a Marine Board employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal.

(a) Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

(b) Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 830.110; ORS 183.452

Stats. Implemented: ORS 704.040; ORS 830.465; ORS 830.420; ORS 830.815

Hist:

June 28, 2016

Item I: Consideration of Rulemaking Ocean Charter Vessels; Chapter 250 Division 015

01. Following consultation with the Guide Advisory Committee and the Charter Subcommittee, staff is proposing rulemaking in Chapter 250 Division 015 regarding charter vessel registration.
02. Charter vessel licensing fees are established in ORS 830.440. The statute lists the annual fee for an Oregon numbered boat at \$50, and a federally documented vessel at \$100, but the statute does not reference whether the registration must be issued annually.
03. To help the Charter Program operate more cost effectively and to reduce burden on charter vessel operators, staff is proposing that the charter boat license may be issued as a biennial or annual license at the request of the operator.

Staff Recommendation

Staff recommends that the Board initiate rulemaking in OAR Chapter 250 Division 15 to draft language for biennial or annual licenses and also to address any applicable housekeeping issues. Staff anticipates returning to the Board in October 2016 for rule adoption.

Item J: Law Enforcement Multnomah Channel

- 01. In April 2016, the Marine Board entered into a special agreement with Columbia County Sheriff’s Office to provide additional law enforcement on Multnomah Channel. This agreement was in response to continued complaints from floating home owners and marinas about wake and speed violations throughout the channel.
- 02. The combined cost of this special emphasis project is \$13,985.40. This expenditure represents \$10,000 of Boating Safety funds and \$3,985.40 of Outfitter Guide funds.
- 03. The Marine Board commends Columbia County Marine Patrol’s for their immediate response to the agency’s request for increased law enforcement in Multnomah Channel.
- 04. Columbia County officers conducted more than 163 hours of special emphasis boat patrol to date on Multnomah Channel. Between April 1 and June 12. They issued 65 citations for violations of the “Blue Light Law,” registration violations and slow-no-wake violations. Of the 310 boater contacts, 115 individuals passed with no issues. Two complaints were filed from boaters related to this increased patrol, but complimentary communications were also received.
- 05. Here is a breakdown of the contacts:

Contacts, Warnings and Violations April 1 - June 12, 2016	
Boater Contacts	310
Registration Violation	137
Blue Light Law Violation	33
Boating Education Card Violation	32
AIS Violation	15
Fire Extinguisher Violation	8
Basic Rule Violation	7
Improperly Equipped Boat	4
Speeding	1
Navigation Rules	1

- 06. In June, boat use moved from the more intensive salmon fishing activities to shad, sturgeon and walleye fishing. On hot days, waterskiers, wakeboards and tubers are beginning to increase. Deputies make numerous contacts with non-motorized operators regarding AIS and life jacket regulations as well.

2016-06 Agy Request Budget Summary for 2017-19

Total of All Programs	Other Funds	Federal Funds	Total Funds	FTE
Leg Approved Budget 2015-17	26,498,709	7,467,774	33,966,483	38.00
Base Budget 2017-19	26,900,465	7,471,621	34,372,086	38.00
Essential Packages:				
010 - Non-Personal Employment Costs	22,453	1,633	24,086	
022 - Phase Out	0	(1,200,000)	(1,200,000)	
031 - Inflation 3.7%	786,842	228,228	1,015,070	
050 - Fund Shift	(131,441)	130,932	(509)	
060 - Technical Adj	(1)	0	(1)	0.00
Subtotal	677,853	(839,207)	(161,354)	
2017-19 Current Service Level	27,578,318	6,632,414	34,210,732	38.00
Policy Option Packages:				
070 - Reductions	(443,896)	0	(443,896)	
X01 - Non-Motorized/AIS	2,237,610	0	2,237,610	2.13
102 - Guide Program	125,323	0	125,323	1.00
Subtotal	1,919,037	0	1,919,037	3.13
2017-19 Agency Request Budget	29,497,355	6,632,414	36,129,769	41.13
Admin/Edu	Other Funds	Federal Funds	Total Funds	FTE
Leg Approved Budget 2015-17	6,425,399	216,626	6,642,025	22.60
Base Budget 2017-19	6,695,278	216,626	6,911,904	22.60
Essential Packages:				
010 - Non-Personal Employment Costs	14,515	0	14,515	
031 - Inflation 3.7%	161,795	8,614	170,409	
060 - Technical Adj	291,224	0	291,224	1.50
Subtotal	467,534	8,614	476,148	
2017-19 Current Service Level	7,162,812	225,240	7,388,052	24.10
Policy Option Packages:				
101 - Non Motorized Program	378,633	0	378,633	1.25
102 - Guide Program	125,323	0	125,323	1.00
Subtotal	503,956	0	503,956	2.25
2017-19 Agency Request Budget	7,666,768	225,240	7,892,008	26.35

2016-06 Agy Request Budget Summary for 2017-19

Law Enforcement	Other Funds	Federal Funds	Total Funds	FTE
Leg Approved Budget 2015-17	10,183,255	3,941,983	14,125,238	4.80
Base Budget 2017-19	10,232,082	3,941,984	14,174,066	4.80
Essential Packages:				
010 - Non-Personal Employment Costs	2,770	1,454	4,224	
031 - Inflation 3.7%	343,579	144,399	487,978	
060 - Technical Adj	(52,006)		(52,006)	(0.25)
Subtotal	294,343	145,853	440,196	
2017-19 Current Service Level	10,526,425	4,087,837	14,614,262	4.55
Policy Option Packages:				
201 - Non Motorized Program	339,375	0	339,375	
2017-19 Agency Request Budget	10,865,800	4,087,837	14,953,637	4.55
Facilities	Other Funds	Federal Funds	Total Funds	FTE
Leg Approved Budget 2015-17	7,870,328	3,309,165	11,179,493	9.00
Base Budget 2017-19	7,933,608	3,313,011	11,246,619	9.00
Essential Packages:				
010 - Non-Personal Employment Costs	3,439	179	3,618	
022 - Phase Out		(1,200,000)		
031 - Inflation 3.7%	218,081	75,215	293,296	
050 - Fund Shift	(131,441)	130,932	(509)	
060 - Technical Adj	(179,815)		(179,815)	(1.00)
Subtotal	(89,736)	(993,674)	(1,083,410)	
2017-19 Current Service Level	7,843,872	2,319,337	10,163,209	8.00
Policy Option Packages:				
301 - Non Motorized Program	1,153,067	0	1,153,067	0.50
2017-19 Agency Request Budget	8,996,939	2,319,337	11,316,276	8.50

2016-06 Agy Request Budget Summary for 2017-19

Aquatic Invasive Species	Other Funds	Federal Funds	Total Funds	FTE
Leg Approved Budget 2015-17	2,019,727		2,019,727	1.60
Base Budget 2017-19	2,039,497	0	2,039,497	1.60
Essential Packages:				
010 - Non-Personal Employment Costs	1,729		1,729	
031 - Inflation 3.7%	63,387		63,387	
060 - Technical Adj	(59,404)		(59,404)	(0.25)
Subtotal	5,712	0	5,712	
2017-19 Current Service Level	2,045,209	0	2,045,209	1.35
Policy Option Packages:				
070 - Reductions	(443,896)		(443,896)	
401 - AIS Permit all Boats	366,535	0	366,535	0.38
Subtotal	(77,361)	0	(77,361)	0.38
2017-19 Agency Request Budget	1,967,848	0	1,967,848	1.73
Revenue Projections	OSMB	AISP	Total	
Beginning Balance 7/1/2017	5,875,818	189,472	6,065,290	
Fuel Tax	8,102,000		8,102,000	
Registrations	13,268,756		13,268,756	
Titles for Boats and Floating Homes	2,046,700		2,046,700	
AISP		1,606,157	1,606,157	
Non-Motorized	2,160,145	417,317	2,577,462	
Charters	14,950		14,950	
Outfitter & Guides	561,566		561,566	
Boater Education	312,802		312,802	
Sports Fish Restoration Contract	142,000		142,000	
Interest Income	74,880	8,580	83,460	
Penalties	103,011		103,011	
Conferences	2,000		2,000	
Lists	8,910		8,910	
Overpayments	35,000		35,000	
Donations	383	317	700	
DAS SFO Errors to adjust out	103,522		103,522	
USCG Recreation Boating Safety	4,313,077		4,313,077	
USFWS Clean Vessel Act	2,119,337		2,119,337	
USFWS Boating Infrastructure Grants	200,000		200,000	
2017-19 Agency Request Budget	39,444,857	2,221,843	41,666,700	0.00
Ending Balance 6/30/2019	5,282,936	253,995	5,536,931	

2016-06 Agy Request Budget Summary for 2017-19

Narrative/Definitions:

Legislative Approved Budget - includes the budget approved July 2015 plus the February 2016 session salary increases adjustment.

Base Budget - The LAB above is inflated for expected merit increases in compensation, etc.

Non-Personnel Employment Costs 010 - Costs not driven by positions, like Pension Bond Obligation increases or changes in estimated savings from vacancies.

Phase-out 022 - A permanent write-down of prior spending authority caused by the lack of BIG projects in recent biennia.

Inflation 3.7% 031 - This DAS estimated rate over the two year period.

Fund Shift 050 - Positions in Facilities change their amount of Federal funding each biennium.

Technical Adj 060 - Some positions change duties amongst programs over time. This aligns staff with the programs they work in.

Revenue Shortfall 070 - The AISP Current Service Level Budget shows a negative ending cash balance (the rest of the agency is fine). Agencies must reduce costs to a level that creates a positive ending cash balance. The Non-Motorized Legislative Concept does not raise AISP fees, but adds to the base of those paying the fees. The estimated extra revenue is not enough to allow package 401 to restore all of the 070 reductions. A fee increase in the AISP program may be necessary in the 2019-21 budget cycle. The fee adequacy will be analyzed by February 2018.

Non-Motorized Legislative Concept 101, 201, 301, 401 - Estimated revenues and expenditures based on guidance from advisory committee and staff.

Outfitter & Guide Position 102 - Make permanent the present day Limited Duration position. Due to added complexity from 2013 statute changes, a Program Service Representative -4 is requested.

June 28, 2016

Item L: Election of Board Officers

01. Consideration of Election of Board Officers

The Board may decide to continue its tradition of rotating the position of Board Chair and Vice-Chair.

<u>Position</u>	<u>Board Member</u>	<u>Term Ends</u>
Chair	Cliff Jett	June 2017
Vice Chair	Brian Carroll	June 2017 (end of second term)
Member	Jen Tonneson	June 2019
Member	Jas Adams	June 2019
Member	Val Early	June 2020

02. Nomination and Vote

June 28, 2016

Item M: Executive Session

Pursuant to ORS 192.660(2)(i) the Board will meet in Executive Session to conduct the annual review and evaluation of the Agency Director.

Item O: Petition and Rulemaking Procedures

- 01. Board Member Adams expressed an interest in learning more about the rulemaking and petition procedures as they relate to the public comment periods. The Oregon State Marine Board generally notices two types of public comment periods: petitions and rulemakings. Occasionally, the agency will request comment on a non-administrative rule related topic; for example, the relocation of the Duckworth Dock.
- 02. The rulemaking petition procedures are set forth in ORS 183.390 and OAR 137-001-0070 (Department of Justice Model Rules for Rulemaking). The very first line of OAR 137-001-0070 says “OAR 137-001-0070 was adopted by the Attorney General as required by ORS 183.390. Agencies must apply this rule without further adoption or amendment.”
- 03. The statute and model rule for petitions further outlines:
“Any interested person may petition an agency to adopt, amend or repeal any rule” and “within 90-days of the submission of a petition, the agency must either deny the petition in writing or initiate rulemaking proceedings.”
- 04. If the petition requests the amendment or repeal of a rule, the agency must invite public comment on the rule, and specifically request comment on whether there are options for achieving the substantive goals of the rule in a way that reduces negative economic on businesses ORS183.390(2).
- 05. The law does not specify that an agency must invite public comment on a petition for the promulgation of a new rule.

Board Direction

- 01. In the past three years, the agency has solicited written public comment on eight rulemaking petitions; as illustrated:

2013	Applegate Reservoir	denied
2014	Salmon River PWC	denied
	Willamette Falls	denied
2015	Cape Kiwanda	denied
2016	Jefferson County Anchoring	accepted for rulemaking
	Kinney Lake – Wallow County	accepted for rulemaking
	Multnomah Channel	denied
	Chetco River – non-motorized	

- 02. The agency’s procedures followed either option one or two, illustrated below. The decision on whether or not to schedule “oral presentation” aka “a public meeting”, were made on a case-by-case basis based on the agency’s evaluation of the level of interest in the petition and an initial evaluation of the Board’s rulemaking authority.

03. The Board has four options for procedures to solicit public comment on petitions to amend or repeal and existing rule:
- 1) Notice public comment period. Accept written comment only.
 - a. Staff presents written recommendation to Board.
 - b. Board makes decision to accept or deny petition.
 - c. Order of Decision is provided in writing within 90-days to Petitioner.
 - 2) Notice public comment period. Notice one hearing. Staff accepts oral testimony.
 - a. Staff presents written recommendation to Board.
 - b. Board makes decision to accept or deny petition.
 - c. Order of Decision is provided in writing within 90 days to Petitioner.
 - 3) Notice public comment period. Notice one hearing. The Board accepts oral testimony.
 - a. Board makes decision immediately to accept or deny petition.
 - b. Board postpones their decision until another meeting.
 - i. Staff presents written recommendation to Board.
 - ii. Board makes decision to accept or deny petition.
 - iii. Order of Decision is provided in writing within 90-days to Petitioner.
 - 4) Notice public comment period. Notice two hearings. Staff accepts oral testimony. The Board accepts oral testimony.
 - a. Board makes decision immediately (at conclusion of second hearing) to accept or deny petition.
 - b. Board postpones decision until another meeting.
 - i. Staff presents written recommendation to Board.
 - ii. Board makes decision to accept or deny petition.
 - iii. Order of Decision is provided in writing within 90-days to Petitioner.
04. If a petition is requesting the adoption of a new rule, the agency has similar options, with the addition that the Board can grant or deny the petition without public input. The procedures for a petition for a new rule would be:
- 1) Grant the petition without public input and begin the rulemaking process (see Rulemaking below).
 - 2) Notice public comment period, without or without hearing(s), as described above in the repeal or amend options above 1-4.
 - 3) Deny the request with no further action.
 - 4) Order of Decision is provided in writing within 90-days to Petitioner.
05. The 90-day decision timeframe complicates matters, as the agency often has to decide whether or not to solicit comment, and whether or not to schedule a public meeting without Board input since the Board normally only meets four times a year. Routinely, the agency solicits comment and, if a hearing is scheduled, accepts oral testimony in front of staff at a location where the rule change is being proposed.

06. If the Board decides that they want to accept public testimony (option 3.3 or 3.4 above), the Board will likely have to schedule emergency Board meetings between the quarterly scheduled Board meetings and be prepared to travel to the location where the rule change is being proposed.
07. The procedures for soliciting public testimony once rulemaking is open are slightly different:
08. Before permanently adopting, amending or repealing any rule, the agency must provide written notice of its intended action in the Secretary of State's *Oregon Bulletin*, ORS 183.460, as well as, to other interested parties and legislators.
09. All intended rulemaking notices must be filed no later than the fifteenth of the month, preceding publication in the *Oregon Bulletin*. Recommended earliest date of a hearing is the twenty-second of the month following *Oregon Bulletin* publication.
010. The agency has three rulemaking filing options:

Rulemaking without Hearing

1. Written public comment only.
 - a. Staff presents written recommendation to the Board.
 - b. Board makes decision to adopt or not adopt the rule(s).
2. However, if 10 or more persons, or an association with 10 or more members, request a hearing, in writing, within 21 days following publication of *Oregon Bulletin*, the agency must, re-notice its intent as Rulemaking with Hearings(s).

Rulemaking with Hearing

1. Notice public comment period. Notice one hearing. Staff accepts oral testimony.
 - a. Staff presents written recommendation to Board.
 - b. Board makes decision to adopt or not adopt the rule(s).
2. Notice public comment period. Notice one hearing. The Board accepts oral testimony.
 - a. Board makes decision immediately to adopt or not adopt the rule(s).
 - b. Board postpones their decision until another meeting.
 - i. Staff presents written recommendation to Board.
 - ii. Board makes decision to adopt or not adopt the rule(s).

Rulemaking with two (or more) Hearings

- 1) Notice public comment period. Notice two hearings. Staff accepts oral testimony. The Board accepts oral testimony.
 - a. Board makes decision immediately (at conclusion of second hearing) to adopt or not adopt the rule(s).
 - b. Board postpones decision until another meeting.
 - i. Staff presents written recommendation to Board.
 - ii. Board makes decision to adopt or not adopt the rule(s).

Petition Review Process

Step	Timeframe	Date	Action	Responsible
1	Day 1 – 7	11/4/2013	Petition received. Review for completeness: If not complete return the petition. If it is complete, continue.	Policy Analyst
2	3	11/6/2013	Identify required legislators, state agencies affected, port and parks and recreation districts, and city and county officials in the area affected	Policy Analyst
3	4	11/7/2013	Determine last date of public comment and write public notice requesting comment. Determine if a public meeting is warranted in addition to solicitation of written comments. Approve press release.	Policy Analyst
4	5	11/8/2013	Send notice requesting comments on the petition to: a) Interested parties list; b) State agencies affected; c) Port and park and recreation districts in the area affected; d) City and/or county officials in the area affected; e) Secure public meeting room (if required).	Rules Coordinator
5	9	11/12/2013	Send out press release	PIO
6	5	11/8/2013	Post petition information on website	Webmaster
7	42	12/16/2013	Conduct public meeting (if needed)	Policy Analyst
8	59	1/2/2014	Review public comment and write staff recommendation;	Policy Analyst
9	66	1/9/2014	Board meeting to decide whether to: a) deny petition; b) open the rule for rulemaking; or c) direct the staff to take other action.	Marine Board
10	89	2/1/2014	Send Board decision to petitioners. If necessary, initiate the rulemaking process.	Policy Analyst
11	Day 90	2/1/2014	The above process must be completed within 90 days of the receipt of the petition.	Policy Analyst

Permanent Rulemaking Process

Step	Timeframe	Date	Action	Responsible
1	1-3 months before filing		Identify required legislators, state agencies affected, port and parks and recreation districts, and city and county officials in the area affected	Policy Analyst
2	1-3 months before filing		Appoint advisory committee or use other means to obtain public input, as appropriate.	Policy Analyst
3	1-2 months before filing		Draft proposed new rules or amended rules, or identify rules to be repealed.	Policy Analyst
	1-2 months before filing		Complete fiscal impact statement with input from advisory committee	Policy Analyst
4	2-4 weeks before filing		Ask Board for approval to open rules	Policy Analyst
5	2-4 weeks before filing		For new rules, check with Administrative Rules Unit, Archives Division, of the Secretary of State's Office to obtain numbers for the new rules.	Rules Coordinator
6	Filing Day – Day 1	5/15/2016	Prepare and deliver to the Administrative Rules Unit for publication in the Secretary of State's Bulletin: a. Notice of Rulemaking or Notice of Rulemaking Hearing b. Statement of Need and Fiscal Impact	Policy Analyst prepares; Rules Coordinator files
7	Day 1	5/15/2016	Give notice:	
			a. To specified legislators (49 days required);	Rules Coordinator
			b. To agency interested parties list (28 days);	Rules Coordinator
			c. In Secretary of State's Bulletin (21 days); and	Rules Coordinator
			d. In accordance with the agency's notice rule. 250-001-0000 By mailing or emailing notice to the following persons or organizations:	
a) State agencies, if affected;	Rules Coordinator			
b) Port and park and recreation districts in the area affected;	Rules Coordinator			
c) City and/or county officials in the area affected;	Rules Coordinator			
8	Day 1 – Day 15	5/15 - 5/30	Post rulemaking notice on OSMB website	Web master
9	Day 1 – Day 15	5/15 - 5/30	Send press release including information from Notice of Rulemaking and hearing time and location	PIO
10	Day 36 at earliest	6/20/2016	Hold rulemaking hearing, if scheduled or requested.	Policy Analyst
11	Day 37 - Day 49	6/21 - 7/3	Revise proposed rule to reduce significant adverse economic impact on small businesses, consistent with public health and safety.	Policy Analyst
12	Day 50 at earliest	7/4/2016	Adopt, amend, or repeal rules after fully considering all written and oral comments.	Marine Board
13	Day 51 at earliest	7/5/2016	File copy of new or amended rules with Administrative Rules Unit, along with the original and one copy of the Certificate and Order for Filing Permanent Administrative Rules and a computer disk containing the rule in plain text and the original format, an electronic copy of the Certificate and Order for Filing Permanent Administrative Rules, and a PDF copy of any tables, appendices, or other specially formatted material appearing in rule text.	Rules Coordinator
14	Day 61 at latest	7/15/2016	File copy of new, amended, or repealed rules with Legislative Counsel within 10 days after filing with the Administrative Rules Unit, showing all changes.	Rules Coordinator
15			Report to the legislature on rules with an economic impact on business.	Rules Coordinator
16	Max 5 years after filing date	5/15/2021	Review newly-adopted rules no later than five years after adoption to determine whether (1) rule should be repealed or amended; (2) fiscal impact statement was accurate; and (3) rule had intended effect.	Policy Analyst/ Rules Review Committee

June 28, 2016

Item P: Policy and Environmental Section Report

Aquatic Invasive Species Prevention Program

01. As of June 10, four of the watercraft inspection stations are open. Unfortunately, the Klamath Falls station on Hwy 97 is still not operational. The person hired by the Oregon Department of Fish And Wildlife (ODFW) resigned prior to their staff training. ODFW re-posted the position and anticipates having the station open by early July.
- .02 A total of 4,203 inspections on clean boats has been completed. Seventy-eight “dirty boats” were intercepted and cleaned (mostly aquatic vegetation) and decontaminations were performed on 9 zebra/quagga mussel contaminated boats. The mussel boats came from Lake Mead, Lake Pleasant and Lake Havasu.
- .03 Staff finalized the contract with the Oregon State Police to have Fish and Wildlife Troopers (and Road Patrol Troopers) take over the law enforcement duties at the Ashland watercraft inspection station. In June, OSP began four hours per week of enforcement duties. The contract will expire in June of 2017.
- .04 Staff is working with the Oregon Invasive Species Council on plans for long-term strategic activities. The Council is active on many projects. Glen Dolphin will serve as the Council’s vice-chair in 2017 and Chair in 2018.

Abandoned and Derelict Vessels

01. Current Status of ADV Fund (as of June 2016):
of vessels removed: 26
Money spent by OSMB: \$101,897.24
Match provided by DSL: \$ 23,339.56

	OSMB Amount
Total Spent	\$101,897.24
Pending Vessels	\$ 3,600.00
Hold for Western Removal	\$ 17,500.00
Hold for DSL Enforcement	\$ 10,000.00
Grand Total	\$132,997.24
Amount Remaining in Fund	\$ 17,002.76

02. Staff held the first official meeting of the Abandoned and Derelict Commercial (ADCV) Vessel Task Force for the Oregon coast on April 29, 2016 in Newport. Task Force members heard from representatives from other state Derelict Vessel Removal Programs (WA, TX, and FL), which sparked a robust discussion about ideas that Oregon could borrow or improve. The Task Force outlined the development of a database that will capture all the commercial vessels along the Oregon coast, both active vessels and “vessels of concern.” A reporting form was developed to capture data on vessels of concern. A repository of Task Force resources can be found on the Marine Board’s website: <http://www.oregon.gov/OSMB/boater-info/Pages/ADCV-Task-Force-Library.aspx>. This inventory will help to track vessels over time, as well as, give a picture of the current active fleet. It is important to understand the scope of the problem, especially in regards to the overall active fleet, to be able to estimate avenues for potential removal funding generation.

03. The Department of State Lands (DSL) began enforcement actions on a set of live-aboard boaters trespassing on the Willamette River in the downtown area of Portland. Staff communicates regularly with DSL's on this endeavor. OSMB will be involved in hiring contractors and paying up to 75% of the removal costs of any boats that are seized through this process. OSMB has set aside \$10,000 for this purpose. Here is a link to one of the news articles about this action: http://www.oregonlive.com/portland/index.ssf/2016/05/state_orders_boaters_parked_on.html.
04. Staff has received comments back from the Department of Justice on new procedures to start collections on vessel removal projects OSMB has paid for since the start of the 2013-2015 biennium. A few more minor tweaks to notification wording and the process timeline will ensure OSMB is legally set to start doing cost recovery.

Clean Marina and Clean Boater Programs

01. Staff attended the grand re-opening celebration at Promontory Park, owned by PGE, to hand out Clean Boater bags and talk with boaters. Promontory Park is working toward achieving Clean Marina certification and is very close to completion.



Bioswale at Promontory Park for treating stormwater runoff from the parking lot

02. Staff is working on updating the Clean Marina Guidebook, first published when the program was initiated in 2005. The updated guidebook draft, together with redesign/formatting, is underway. Staff anticipates completion by late summer.

June 28, 2016

Item Q: Boating Facility Program Report

Boating Facility Updates

01. Staff is continuing to assist boating facility owners responding to FEMA requests and damage evaluations. At the April 2016 Board meeting, staff provided information on eight facilities that reported damage. An additional site, Yamhill County discovered boat ramp toe damage in late May at Dayton Landing. Three sites have been repaired. The following table identifies the remaining sites staff is providing assistance.

Managing Agency	Location	Project	Status
City of Wheeler	Wheeler Short term tie-up dock	Dredging	Waiting for City update
City of Coquille	Sturdivant Park	Short term tie-up dock, piling and gangway	Survey completed, developing design
Port of Alsea	Port Marina & Boat Ramp	Piling and dredging	Waiting for permits to be issued
Linn County	Stayton Boat Ramp	Boat ramp and parking	Requesting hydrologic analysis
Linn County	Buell Miller Boat Ramp	Boat ramp, parking and bank stabilization	Requesting hydrologic analysis
Yamhill County	Dayton Landing	Boat ramp toe	Assessment sent to FEMA. Waiting for site visit with FEMA

02. The City of Portland is reviewing the amendment for Duckworth Dock. The City has an internal meeting scheduled for June 17 and a probable Council work session to be scheduled later. Portland Bureau of Transportation notified staff on June 16 that during their annual inspection of the dock they discovered a crack in one of the dock sections. They are extending the Fleet Week closure of the dock by up to two months.

03. Ashley Massey attended the Hole in the Wall facility dedication on May 14. The facility was dedicated during the Upper Clackamas Whitewater Festival and many people attended the event. As soon as the ribbon was cut boaters were using the new rail slide to access the river.



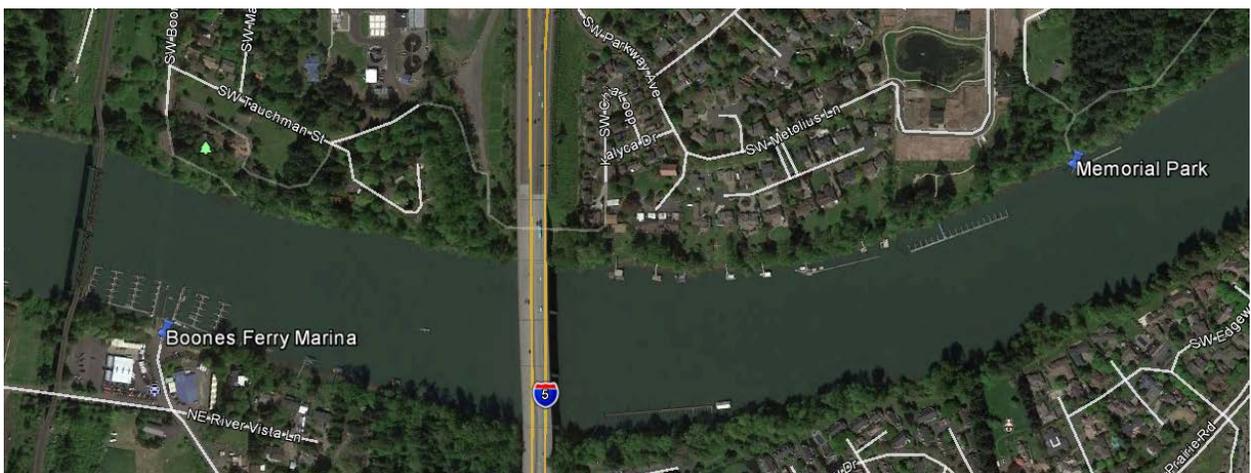
04. On June 3, Ashley Massey and Janine Belleque attended the Macks Canyon- Oscar Lange boat ramp dedication. The dedication was widely attended with friends and family coming from as far away as Montana. Several motor boats and rafts boated to the separated boat ramps. The separate boat ramps but shared parking and sanitation worked very efficiently for both users.



The yellow circle on the left is the non-motorized ramp and staging area.

The blue circle on the right is the motorized ramp.

05. The City of Wilsonville has verbally notified staff that at the end of the twenty-year grant term (June 30, 2017) for Memorial Park short-term tie-up they intend to pursue kayak/canoe rentals on the dock as identified in their master plan. Additionally, the City anticipates working on a new master plan for Boones Ferry Park (identified by the tree on the map) this year. Based on the Memorial Park master plan they believe the park will feature a non-motorized launch and low-freeboard docks. Staff is communicating with the City and has requested to participate in the development of the Boones Ferry Park master plan. The Boones Ferry Park is directly across from Boones Ferry Marina which is a popular principally motorized access. Staff participation will be focused on reducing conflict between user groups.



06. Klamath County reported that the two piling supporting the debris deflection boom at Wocus Bay were leaning over. Staff contacted the Marine Patrol and requested that the dive team inspect the piling and let us know if the piling was bent or pushed over. The Marine Patrol indicated that the piling did not appear to be bent. Staff is assisting the County with permits to redrive the piling. Depending upon the issuance of the permits, the County may apply for a grant in October.



07. Tillamook County Steering Committee for Cape Kiwanda Tourism Master Plan met on June 2 to hear a consultant presentation of facility alternatives. The bulk of the alternatives focused on traffic circulation, turnarounds, parking areas, garbage, restrooms and safety on Cape Kiwanda Drive, Cape Kiwanda Park and Webb Park. This area has many different user groups: dory fleet, surfers, bicycles, pedestrians, businesses, campers. A Town Hall meeting is scheduled for June 29 to gather additional public comment. The County will evaluate the Steering Committee's priority ranking of the options and comments from the Town Hall meeting to develop a preferred alternative.

ODFW Federal Sport Fish Restoration Boating Access Process Change

01. Oregon Department of Fish and Wildlife (ODFW) and the Marine Board have a long standing partnership to cooperatively identify boating access sites for federal Sport Fish Restoration funding and for staff to provide technical assistance on those projects to boating facility owners.
02. Historically, the paperwork process from providing staff recommendation to ODFW, then between ODFW and U.S. Fish and Wildlife Service and finally between ODFW and the boating facility owner would take on average four to six months. This paperwork time can reduce the amount of time within a biennium that a project can be constructed by twenty-five percent and result in missing the in-water work window. Both agencies recognize the impact the time has on successful completion of the project within the biennium.
03. ODFW and staff have discussed ways to reduce the paperwork processing time and in short the state, federal and local government process takes time. As a result staff would like to propose changing how the Board considers projects with ODFW federal funds to provide full use of the biennium to the boating facility owners. Traditionally, these projects are considered by the Board the last week of June at the end of the biennium. Staff is proposing that the Board consider the ODFW federal fund projects at the January 2017 Board meeting as conditional awards. The award is conditioned on approval of the agency budget, no expenditures prior to July 1 and ODFW federal fund award. This is similar to the Board action for the first year of the OYCC grant and in past bienniums the Board has conditionally awarded grants to projects with summer in-water work windows to allow the boating facility owners to construct immediately.

2015-17 Grant and Project Construction Status

1522	Port of Garibaldi: service boat outboard motor replacement	Replacement of outboard motor completed and final reimbursement processed.
1524	Port of Garibaldi: gangway replacement project.	Final design to be completed and sent to owner by end of June.
1529	Lane County: Hendricks Bridge, permits.	The County has completed and submitted the DSL/USACE permit application.
1531	BLM: North Gerber Reservoir, boarding dock replacement.	The contract has been awarded and dock fabrication has started. The docks are anticipated to be installed in the Fall.
1533	State Parks: Lake Billy Chinook, floating restrooms.	The floating restrooms are being fabricated. Staff inspected the fabrication at the end of May.
1536	State Parks: Indian Creek, boat ramp, parking and docks.	Facility improvement project completed. Final reimbursement anticipated in July.
1538	City of Rainier: Rainier Marina, pumpout/dump station replacement and cameras.	City is in the process of ordering equipment.
1539	City of Albany: Bowman Park, flush restroom.	The restroom has been installed. The City is completing utility connections and sidewalks. Final inspection is anticipated by the end of June.
1542	City of West Linn: Cedaroak, ramp and boarding dock replacement.	The City has obtained a contractor and issued the notice to proceed. The contractor has ordered materials and will mobilize on site in mid-August.
1543	Linn County: Edgewater Marina, pumpout/dump station.	Final design package for purchase of equipment sent to owner.
1540	Clackamas County/PGE: Hole in the Wall, boat slide, parking, vault toilet.	Project completed final reimbursement processed.
1541	Clackamas County: Hebb Park, boarding and short-term tie-up dock replacement.	Final design package sent to owner for earthwork phase of project.
1544	Tillamook County: Memaloose Point, sediment analysis of boating facility.	County has hired consultant to begin complete the analysis.

1546	City of Oregon City: Jon Storm, pumpout/dump station replacement.	Final design package sent to City for purchase of equipment.
1547	Union County: Thief Valley, boarding dock replacement.	The contractor is fabricating materials for installation late summer.
1550	City of Tillamook: Carnahan Park, boarding dock replacement.	The City has awarded contracts for the dock fabrication and installation. The project is anticipated to be completed by early Fall.
1553	Port of St. Helens: Scappoose Bay Marina, dredging project.	Project completed final reimbursement processed.
1554	City of Portland: Willamette Park, dredging, ramp toe repair and debris boom.	The City has awarded the contract and construction is anticipated to begin in early September.
1555	Lincoln County: Knight Park, vault toilet replacement and parking repairs.	The toilet is scheduled for delivery in early July. The County is obtaining bids for installation and pavement repairs.
1556	Port of Cascade Locks: ramp toe repair project.	Final design package has been completed and sent to Port. The Port anticipates going out to bid within the next 30 days.
1557	Douglas County: Amacher Park, ramp toe repair.	The project is out to bid. Construction is anticipated beginning mid-July.
1559	City of Milwaukie: Riverfront Park, emergency bridge repair.	Project completed. Awaiting final documentation for reimbursement.

2013-15 Grant and Project Construction Status

1493	Lane County: Orchard Point, pumpout/dump station and short-term tie-up dock.	Project completed final reimbursement processed.
1512	City of Oregon City: Clackamette Park, hydrologic analysis project.	Project completed final reimbursement processed.

June 28, 2016

Item R: Boating Safety Program Report

Boating Accidents

01. To date, there are 35 reported boating accidents. This number is doubled, compared to last year at this time; and represents one of the highest numbers in 10 years. As of June 13, there are seven recreational boating fatalities and multiple boat-to-boat collisions have resulted in serious injuries.
02. Alcohol and marijuana continue to play a role in accidents, while causal factors such as operator inattention, failure to post a proper lookout, failure to give way, and operator negligence are also present. One boat collision has resulted in criminal charges being filed against the operator for BUII and reckless endangerment. Two serious collisions involved motorboat operators not looking in the direction of travel.
03. There are seven reportable fatalities this year: four from motorized vessels including one from a PWC; and three non-motorized vessels (kayak, canoe, SUP). Of the seven, two were wearing life-jackets. The female riding the SUP on the Columbia River off Sauvie Island has not been located. The male paddling the kayak on the Rogue River has not been located. The male in a motorboat in Youngs Bay has not been located.
04. Commercial accidents remain at five. However, a fatality involving an outfitter guide in 2015 that was previously undisclosed to the Marine Board is currently being investigated. This fatality involved a head injury and the victim died at some point after the incident. Details are being gathered.

Law Enforcement Round-Up

01. Law enforcement numbers for the first five months of 2016.
02. Between January 1 and June 12, marine officers statewide stopped 2,137 boats across Oregon. Inspections resulted in 1,738 warnings and 411 citations. Some boats received multiple citations or a combination of citations and warning. There were 16 stops resulting in citations statewide in January, 18 in February, 17 in March, 98 in April, 182 in May and 68 through June 12.
03. Columbia County had 107 stops resulting in citation, Klamath had 70, Tillamook had 36, and Malheur had 26. Nine counties had more than 10 citation-related stops overall. Of boats cited, 168 were registered in Oregon, 44 in Washington, 20 in Idaho and 7 in California.
04. Top stops and their associated bail schedule are listed below.

Violation	Bail	Cite	Warn
Fail/Possess/Produce/OR Altered AIS Permit	\$30/50	104	33
Personal Flotation Devices	\$260	75	42
Validation Stickers	\$110	55	20
Certificate of Number Required	\$110	52	18
Boating Safety Education Certificate Required	\$110	27	8
"Blue Light" Law	\$260	18	3
Certificate of Number Not Applied For	\$260	12	6
Sound Signaling Device	\$110	11	64
Basic Rule for "Slow-No Wake"	\$260	8	4

Identifying Number on Forward Half of Boat	\$110	8	13
Child Not Wearing PFD	\$260	7	3
Penalty for Failing to Stop at an AIS Check Station	\$110	7	0
Operating Improperly Equipped Boat	\$260	5	2
Operating Boat While Under the Influence	A Misd	5	1
Fire Extinguishers	\$110	4	6
Launch Boat with AIS	\$260	3	2
Unsafe Operation	\$435	2	0

Law Enforcement Training

01. The two week Marine Academy concluded May 6 in Madras. This year's class was exceptionally large, reflecting a high number of turnover among marine patrol officers. Instructors generally felt, more so than in past classes, that students were less familiar with boating and marine law when arriving at the academy.
02. Staff increased the student-instructor ratio to two-to-one for on-water training. Thirty two student attended week-one classroom training but week two was limited to 26. Students unable to participate in week two training will complete additional training and skills assessment at their agency.
03. The Madras venue was excellent, and Lake Billy Chinook was a convenient and suitable location. Staff extends a sincere thank you to Jefferson County Sheriff's Office for their assistance in the event, and to all instructors who helped conduct the training.
04. The annual Drift Boat training course was held June 20 through 24 on the upper Rogue River. Jet Boat Training will be held in Gold Beach July 18-21.

Outfitter Guide

01. The Outfitter Guide Program continues processing and reviewing applications. There are currently 1,264 active registered guides. More than 200 guides who were active in 2015 have not yet registered.
02. Staff conducted a second round of certifications for the Nonresident Hunt Tag Program following ODFW's 2016 season tag draw. Testing for new program participants was held June 14 in Salem, June 15 in Bend, and June 16 in Clackamas. Applications for 2017 certifications will be mailed in August.
03. Coast Guard LT Theresa Bigay continues her work at the Marine Board assisting with review and development of equipment lists and inspection requirements for outfitter guides and charter operators. She has been extremely helpful gathering data and creating useful reference material that will benefit charter operators. Currently she is researching implementation strategies for upcoming drug, skills and physical testing for inland motorboat operators.

Item S Business Services Program Report

2015-17 Budget

01. The agency is 47% through the biennium and it has been two months since the last financial report. Revenue recognition is picking up and we are at 27% of budget. When compared to the same time in the prior biennium (June 2014) revenues are ahead of pace. Expenditures are also up slightly.
02. This report has adjustments in the projection column. There will probably be another adjustment in 6 to 8 months. The reason for waiting is because this is done in conjunction with the required cash balance and revenue estimates to build the 2017-19 budget. The projection shows greater gas tax revenue due to a better than expected boat count at 12/31/15.
03. **Other Funds** registration and title revenue through the first 11+ months are running 22% greater than the prior biennium, due in part to almost six months of higher fees contributing to the difference. Expenditures are higher compared to the prior biennium in part from having limited duration positions.
04. **Federal Funds** for this biennium will expend more than the prior biennium because of the emphasis on accelerating law enforcement payments from Federal funds over State.
05. **AISP** Compared to where the program is at vs the last biennium, revenues are up 10% which might be attributable to the strong outdoor recreation economy and favorable weather. The expenditures are about \$100,000 lower than this time in the prior biennium. This trend will need to continue in order to maintain an adequate cash balance for the next biennium. There will be more discussion in the agenda item on the 2017-19 Agency Request Budget.

Program Operations

01. Information Technology – The Department of Administration Services (DAS) Enterprise Technology Services (ETS)-Information Security team analyzed and reported on OSMB's Information Security Assessment status. The agency scored 4.5 out of 10. Some of the findings are currently being addressed and others will happen over time with an anticipated completion date of year end.
02. Plans are in the works with DAS ETS to change the agencies directory platform from Novell to Microsoft. Some training will be required. A study is taking place to determine if it's more efficient to rent DAS servers or add/upgrade our existing machines. The telephone changes will occur in October and email provider change in December or January. A new round of desktop workstation replacements should start in July.

Oregon State Marine Board
 Operation Results for the 2015-17 Biennium
 At June 10th, 2016

OTHER FUNDS

	Budget 2015-17	Actual at 6/10/16	Percent of Budget	Projected 2015-17
REVENUE:				
UNREFUNDED FUEL TAX	\$8,031,919	\$0	0.0%	\$8,382,473
REGISTRATION	\$12,459,512	\$5,574,817	44.7%	\$12,268,453
TITLING	\$2,311,935	\$497,469	21.5%	\$1,827,825
CHARTERS	\$36,024	\$6,950	19.3%	\$13,850
GUIDES & OUTFITTERS	\$544,768	\$260,288	47.8%	\$537,541
MANDATORY EDUCATION	\$270,998	\$113,691	42.0%	\$311,248
SPORTFISH RESTORATION GRANT	\$142,000	\$0	0.0%	\$142,000
OTHER - PENALTY, INTEREST, MISC	\$186,757	\$63,789	34.2%	\$231,841
TOTAL:	\$23,983,913	\$6,517,004	27.2%	\$23,715,231
EXPENDITURES:				
ADMINISTRATION & EDUCATION	\$5,849,270	\$2,772,135	47.4%	\$5,849,270
CHARTERS	\$31,738	\$5,654	17.8%	\$13,638
GUIDES & OUTFITTERS	\$394,391	\$132,287	33.5%	\$401,791
LAW ENFORCEMENT	\$10,183,255	\$2,904,014	28.5%	\$10,183,255
FACILITIES	\$7,870,328	\$2,042,023	25.9%	\$7,200,328
ABANDONED BOATS	\$150,000	\$101,897	67.9%	\$150,000
TOTAL:	\$24,478,982	\$7,958,010	32.5%	\$23,798,282
CURRENT REVENUE v. EXPENDITURES *	(\$495,069)	(\$1,441,006)		(\$83,051)

* Starting cash balance is \$5.91 million, operating budget deficit from the decrease to \$4.50/foot

FEDERAL FUNDS

REVENUE:				
US COAST GUARD REC. BOATING	\$4,158,609	\$1,469,861		\$4,158,609
USFWS CLEAN VESSEL ACT	\$2,309,165	\$4,109		\$2,109,165
USFWS BOATING INFRASTR. GRANT	\$1,000,000	\$0		\$800,000
TOTAL:	\$7,467,774	\$1,473,970	19.7%	\$7,067,774
EXPENDITURES:				
ADMINISTRATION & EDUCATION	\$216,626	\$68,575	31.7%	\$216,626
LAW ENFORCEMENT	\$3,941,983	\$1,886,417	47.9%	\$3,941,983
FACILITIES	\$3,309,165	\$333,468	10.1%	\$2,909,165
TOTAL:	\$7,467,774	\$2,288,460	30.6%	\$7,067,774
CURRENT REVENUE v. EXPENDITURES	\$0	(\$814,490)		\$0

AQUATIC INVASIVE SPECIES PROGRAM

REVENUES:	\$1,581,126	\$666,553	42.2%	\$1,501,215
EXPENDITURES:	\$2,019,727	\$569,807	28.2%	\$1,650,915
CURRENT REVENUE v. EXPENDITURES **	(\$438,601)	\$96,746		(\$149,700)

** Offset by \$339,213 beginning cash balance.

BEGINNING CASH BALANCE	\$5,326,967	\$6,304,300		\$6,298,041
CHANGE	(\$933,670)	(\$2,158,750)		(\$232,751)
ENDING CASH BALANCE (at above date)	\$4,393,297	\$4,145,550		\$6,065,290

June 28, 2016

Item T: Registration Program Report

- .01 As of June 7, 2016, there are 160,027 actively registered boats with registration expiring 12/31/2015, 12/31/2016 or 12/31/2017 excluding boats with exempt registrations.
- .02 Exempt boats are those owned by a city, county, state and federal agency or organization with registration that never expires. There are approximately 1,500 exempt boats
- .03 The attached Registration Statistics Report, BOATS (Boat Oregon Accounting and Transaction System) year-to-date (YTD) section reflects completed transactions by credential type cumulatively from November 1, 2015 through June 7, 2016. Boat Transactions posted and pending transactions reflect transactions posted in BOATS and those reviewed for completion or requiring additional documentation, fees or a hull identification number (HIN) verification or inspection. Over time, we expect seasonal trends. This year in particular we are seeing boats return to activity that have been inactive and customers with multiple boats selecting which boat to register based on water levels and fishing opportunities.
- .04 Online boat registration renewals continue at over 35% of all registration transactions including those with renewing registrations expiring 12/31/2011 through 12/31/2015. Back office processing of online renewals is same or next business day for printing in preparation for State Printing & Distribution to fold, insert and mail the documents.
- .05 At the time of this report Boat Registration Specialists are processing transactions received at the Marine Board from Boat Registration Agents in late March and those received by direct mail in early April. Transactions for brand new boats and boat registration renewals received from boat registration agents and by direct mail are current through early May.

BOATS Project Update

- .01 Agency staff system administrators submit, document, discuss, and test resolutions provided to NIC from the subcontractor, MicroPact. There are currently 21 open tickets submitted to the NIC Oregon E-Government Program Service Desk. Of the 21 tickets, 10 are of High Priority.
- .02 OSMB has requested a meeting with NIC to discuss hosting related to document storage and an upgrade to CAVU eLicense to version 8.2 which will improve customer use with additional browsers not currently functional in version 7.2. An implementation plan will be prepared to allow adequate testing of all customized functionality before final implementation.

REGISTRATION SECTION STATISTICS

MARS YTD through June 2014	2009-10	2010-11	2011-12	2012-13	2013-14	
Title Transfers (title, card)	15,135	14,839	15,209	15,154	7,318	
New boats (title, decals/card)	8,867	8,402	8,776	8,132	4,276	
Registration (decals/card)	73,917	71,365	69,877	68,716	62,775	Actual Count
Replacement Titles	389	418	448	449	227	
Replacement Reg Card	657	552	438	499	233	
Replacement Reg/Decals	2,346	2,349	2,240	2,178	1,218	

BOATS YTD Nov 1 - Oct 31	2014-15	2015-16	
Boat Titles (initial, transfer)	23,850	6,783	
Boat Registrations*	104,722	51,408	Estimated (see below)*
Replacement Boat Titles	513	275	
Replacement Reg Card	221	137	
Replacement Reg Card & Decals	1,667	577	
Livery Registrations	189	280	
Dealer Registrations	49	24	
Floating Property Titles	272	139	

* 2014-15 calculated at avg \$54.50; 2015-16 avg \$77.72.

Online Boat Registration Renewals by Month	MARS BOATS						
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
November	6,020	6,966	8,295	7,915	7,557	5,599	97
December	2,924	3,178	4,085	3,572	3,756	3,998	426
January	2,448	1,935	1,979	1,935	2,051	2,288	1,613
February	1,232	1,092	1,262	1,054	991	1,269	10,783
March	1,423	1,034	866	1,321	2,764	1,625	2,907
April	1,530	1,695	2,914	2,372	1,722	1,365	2,438
May	1,649	1,315	2,148	2,080	1,551	1,722	1,890
June	1,452	1,502	1,467	1,537	1,609	1,968	567 through 6/7
July	1,134	1,097	1,300	1,357	221	1,048	
August	420	537	640	387	376	417	
September	101	147	160	148	113	160	
October	0	40	47	56	32	84	
Totals	20,333	20,538	25,163	23,734	22,743	21,543	20,154

Boat Transactions as of 06/07/16	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14		
Posted in BOATS	163	124	75	47	37	Pending Deficiencies	
Ready to Post in BOATS	7	8	4	3	5	Need review	
	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	
Posted in BOATS	36	47	95	125	151	260	Pending Deficiencies
Ready to Post in BOATS	4	8	12	20	19	49	Need review
	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	
Posted in BOATS	267	143	103	59	37	30	Pending Deficiencies
Ready to Post in BOATS	47	27	15	12	5	9	Need review
	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	
Posted in BOATS	61	230	511	156	64	7	Pending Deficiencies
Ready to Post in BOATS	6	19	47	159	204	65	Need review

Ready to Post means the transaction documents and fees have been uploaded to the system.

Posted means the transaction has been reviewed but not completed being deficient in fees, documents or requiring HIN verification or an inspection