



## 250-019-0010

### 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 reducing excessive congestion and conflict between users, and promoting uniformity of laws pertaining to such use. No problem with any of these issues.

(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 and/or increased law enforcement of existing laws, before acting to restrict public use and enjoyment of boats. No reference to creating a social experience.

(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. None exists

(5) The Board will seek the concurrence and recommendations of affected local jurisdictions and authorities before adopting regulations for local waterways. Fey Stewart should put this one to rest.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.175

Hist.: MB 11-1996, f. & cert. ef. 12-05-96; OSMB 5-2004, f. & cert. ef. 10-14-04

## 250-019-0020

### Definitions

For the purposes of 250-019-0010 to 250-019-0090, the following definitions shall apply:

- (1) "Board" means the State Marine Board.
- (2) "Local jurisdiction or authority" includes cities, counties, park and recreation districts, port districts, state agencies, tribal councils, and agencies of the federal government.
- (3) "Outfitter and guide" is used as defined in OAR 250-016-0001(5-7).
- (4) "Procedural Rules" means procedures for rulemaking as outlined in OAR 250-001-0000, 250-001-0005 Model Rules of practice and Procedure, and 250-001-0030.
- (5) "Boat" means every description of watercraft, including a seaplane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.
- (6) "Waters of this state" means all waters within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as part of a journey or ride to or from the shore of this state.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.175

Hist.: MB 11-1996, f. & cert. ef. 12-05-96; OSMB 5-2004, f. & cert. ef. 10-14-04

## **250-019-0030**

### **Statutory Authority**

- (1) The Board's authority to regulate boating through rulemaking is contained in Title 61, Chapter 830, Small Watercraft of Oregon Revised Statutes (ORS). General rulemaking authority is stated in 830.110 Powers and Duties of the Board, 830.175 Regulations for Specific Areas, and 830.195 Preventing User Conflicts.
- (2) Additionally, 830.175(2) enables the governing bodies of political subdivisions of the state to apply to the Board for special regulations relating to the operation of boats on waters within the territorial limits of the political subdivision.
- (3) State law (ORS 830.040) prohibits political subdivisions of the state from enacting or enforcing any laws contrary to the provisions of Chapter 830. This prohibition together with the provisions of 830.175(2) gives the Board exclusive authority to regulate boats and boating activities on the waters of the state.
- (4) On federally navigable waterways and the territorial sea, the Board shares concurrent jurisdiction with the U.S. Coast Guard. Additionally, Oregon has entered into a Boating Offense Compact (ORS 830.080) with the states of Washington and Idaho establishing concurrent jurisdiction over boundary waters with these states.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.175

Hist.: MB 11-1996, f. & cert. ef. 12-05-96; OSMB 5-2004, f. & cert. ef. 10-14-04

## **250-019-0040**

### **Scope**

(1) The Board may regulate watercraft on all waters of this state. The Board's primary interest lies in waterways where public access for boating is provided, available, allowed, or reasonably accomplishable and is commonly or frequently used by the general boating public.

(2) The Board will not normally regulate waters of this state which are surrounded exclusively by privately owned lands, are sufficiently small so as to preclude access or severely limit public boating use, or are inaccessible to the general boating public by ordinary and usual means.

(3) Restrictions on boats and boat operations adopted pursuant to this rule shall apply to all watercraft, including boats used for commercial activities, such as guided trips.

(4) Rules adopted by the Board to restrict watercraft and their operation pursuant to this Division, shall not apply to:

(a) Watercraft used for the law enforcement activities of authorized public safety agencies;

(b) Search and rescue activities conducted by or under the direction of these agencies; and

(c) Watercraft used for administrative or management functions performed by public agencies with jurisdiction over the subject waters or adjacent lands.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.175

Hist.: MB 11-1996, f. & cert. ef. 12-05-96; OSMB 5-2004, f. & cert. ef. 10-14-04

## **250-019-0050**

### **Existing Laws**

Nothing in this division shall change, amend, or alter any duly established laws or rules contained in Title 61, Chapter 830 of the ORS or chapter 250 of Oregon Administrative Rules, except to add this division in its entirety.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.175

Hist.: MB 11-1996, f. & cert. ef. 12-05-96; OSMB 5-2004, f. & cert. ef. 10-14-04

## **250-019-0060**

## **Types or Methods of Regulations Used**

(1) The Board's regulatory authority accorded by Title 61, includes, but is not limited to the following:

- (a) Establishment of designated speeds;
- (b) Prohibition or the use of motorboats;
- (c) Designation of areas and times for testing racing motorboats; and
- (d) Designation of moorage areas.

(2) Historic regulatory actions by the Board have expanded this list to include administrative rule restrictions on:

- (a) Motor type and/or horsepower;
- (b) Type of watercraft allowed;
- (c) Direction of watercraft travel;
- (d) Time of day, day of week, or seasons of operation;
- (e) Wave and wake;
- (f) Anchoring;
- (g) Water-skiing;
- (h) Boat entry, and;
- (i) Equipment required to be carried on a boat or persons using a boat.

(3) In addition to the types and methods of regulations described above, the Board may restrict watercraft and/or their operation in other lawful ways.

(4) Restrictions on watercraft and/or their operation which are adopted by the Board under the procedures contained in this section may consist of permanent, temporary, or emergency administrative rules.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.175

Hist.: MB 11-1996, f. & cert. ef. 12-05-96; OSMB 5-2004, f. & cert. ef. 10-14-04

**250-019-0070**

## **Procedures for Submitting and Accepting Requests to Adopt, Amend or Repeal Local Boating Regulations**

(1) The Board may accept requests to adopt, amend, or repeal local boating regulations submitted by any interested person in accordance with the Attorney General's Uniform Rule 137-001-0070.

(2)(a) The Attorney General's Uniform Rules governing petitions for rulemaking require the petition to include the name and address of the petitioner and any other persons known to the petitioner to be interested in the rule; that the petitioner propose specific language for the rule, with proposed deletions shown in brackets and any proposed new language shown in boldface; that the petition contain a detailed statement to show the reasons for and the general effects of the proposed rule; and that the petition set forth all propositions of law the petitioner asserts.

(b) In addition to the requirements listed in subsection (a), requests from governmental bodies shall be made to the Board in writing and include the following items of information, when available and relevant, portrayed on a map or maps to the extent possible:

(A) Physical characteristics of the waterway such as size in acres during periods of normal use, length of shoreline, width, depth;

(B) Natural characteristics of the waterway including native or typical aquatic and terrestrial flora and fauna (both resident and migratory), soils, bottom sediment, turbidity, limnology, water quality, habitat of sensitive, threatened, or endangered species;

(C) Natural and artificial obstructions or hazards to navigation such as points, bars, shoals, rocks, stumps, logs, snags, strainers, sunken vessels, weed beds, docks, piers, pilings, dolphins, wharves, dams, spillways, weirs, intakes, outflows, diversions, rapids, water falls, swimming and diving platforms, designated swimming areas, pipelines and utility lines;

(D) Public and private boating facilities such as boat ramps, floats, docks, piers, marinas, pump-outs, fuel docks, floating homes, boat houses, house boats, moorages, water-ski courses and jumps or docks, buoys, navigational markers;

(E) Publicly owned lands such as forests, parks, beaches, campgrounds, picnic areas, and other recreation sites of federal and state agencies, counties, cities, or special districts;

(F) Upland private ownership (individual, corporate, semi-public, public utility, non-profit) including names and addresses of all waterfront property owners;

(G) Existing and/or proposed government regulations or management plans and activities affecting public or private access and/or use of the waterway;

(H) A narrative or graphic depiction of boating and other recreation uses such as location of activities, timing of use (time of day, days of week, seasons of year), types and numbers of watercraft used on waterway, origin of watercraft (marinas, launches, private moorages/docks, rentals, etc.), traffic patterns, areas of congestion, results of surveys or questionnaires;

(I) A narrative description of known and suspected problems and/or conflicts;

(J) A narrative description of boating law enforcement and safety activities on the waterway such as placement and maintenance of navigational markers and regulatory buoys, patrol schedules, types and numbers of complaints received, type and nature of public contacts (excluding boat inspections, warnings and citations), consultations with other managing agencies, and an assessment of law enforcement issues on the subject waterway in the context of county-wide or regional boating issues;

(K) A base map or maps and/or aerial photographs showing the waterway, boating facilities, access points, safety hazards, regulated areas, locations of buoys, general land ownership patterns;

(L) A map of the waterway showing key information to support the request for rulemaking such as traffic patterns, problem or conflict areas, and the area to be subject to the proposed boating restriction;

(M) A description of public input received about the problem or conflict such as public meetings or hearings, advisory committees, letters and phone calls received, management plans prepared, and contacts received from other government agencies;

(N) An analysis of alternatives to the requested rule including law enforcement strategies, signs, publications, outreach or training/education, voluntary efforts, and facilities location and design;

(O) A suggested boating regulation or prescription to address the problems or conflicts described including the specific area to be regulated, when regulations should become effective, whether the regulation should be permanent or temporary, a recommendation on the location and timing and location of public hearings and whether public hearings should be held, a list of key groups, individuals or organizations that should be informed of the requested rules, together with mailing addresses;

(P) A written request on agency letterhead, signed by the responsible government official and addressed to the director or chair of the Board stating, in summary, the need for boating regulations, the suggested boating regulations the Board is requested to enact, and a request that the Board consider enacting administrative rules.

(c) In addition to the requirements listed in subsection (a), requests submitted to the Board by other interested persons shall:

(A) Be addressed to the director or chair of the Marine Board;

(B) Include a concise statement of the problem, conflict, or damage; and

(C) Include legibly printed or typewritten names and addresses of at least ten petitioners, with a straight line separating each name and address, and each name accompanied by a valid signature.

(d) Requests to adopt, amend or repeal local boating regulations made by Board staff in their official capacity shall only be made with prior approval of the director and concurrence of the chair and shall be in the form of an agenda item and staff report presented at a regularly scheduled meeting of the Board.

(e) Requests to adopt, amend or repeal local boating regulations made by Board members shall be addressed to the chair who may direct Board staff to prepare an agenda item and staff report to be presented at a prescribed meeting of the Board.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.175

Hist.: MB 11-1996, f. & cert. ef. 12-05-96

### **250-019-0080**

#### **Procedures for Considering Requests to Adopt, Amend or Repeal Local Boating Regulations**

(1) Requests to adopt, amend or repeal local boating regulations shall be reviewed by board staff to determine whether they are complete, clear, and/or not in conflict or duplicative with existing state or federal boating laws.

(2) Staff will return incomplete or unclear requests to the initiator with a cover letter stating the deficiencies and asking for additional information.

(3) Requests which would conflict with or duplicate existing state or federal laws will not be referred to the Board and may be denied by the director or the director's designee, and returned with a cover letter explaining the conflict or duplication.

(4) The director may retain requests which are substantially complete or clear but lack certain items of information and may direct staff to contact the requesting agencies or individuals to obtain the lacking information.

(5) Within thirty days of receipt of a completed request, the director or the director's designee shall either deny the request in writing or initiate rulemaking proceedings in accordance with OAR 137-007-0070.

(6) Except as provided in subsection (10) and in the case of temporary and emergency rules, the Board may annually adopt, amend or repeal rules to regulate or restrict boating in local or specific waterways.

(7) In order to facilitate the incorporation of all available information relating to requests to adopt, amend or repeal boating regulations for local or specific waterways, and to reduce the costs associated with promulgating rules to establish regulations and making those regulations available to the public, the following procedures shall be followed by the Board:

(a) Prior to the first official business day in April of each year, the Board will accept proposals to adopt, amend or repeal boating regulations for local or specific waterways. Proposals must be submitted in a format prescribed by the Board;

(b) Absent extenuating circumstances only proposals received prior to the first official business day in April each year will be included in the process described in subsections (d) of this section;

(c) A summary of all proposed rule changes received prior to the first official business day in April each year will be publicized through the news media and sent to the persons and organizations identified in Section 250-001-0000(3)(a) through (f);

(d) Proposals received prior to the first official business day in April shall be reviewed by Board staff and marine law enforcement personnel. Proposals for the same waterbody may be grouped or consolidated;

(e) If necessary, public meetings will be held to allow opportunity for public comment on proposals to adopt, amend or repeal local boating regulations;

(f) A Board meeting will be held in September or a subsequent month each year at which time the Board will consider proposals to adopt, amend or repeal boating regulations for local and specific waterways. All proposals to adopt, amend or repeal local boating regulations properly submitted in compliance with subsections (a) and (b) of this section shall be considered by the Board. Other requests or proposals to adopt, amend or repeal boating regulations for local and specific waterways may be considered at the discretion of the Board;

(g) In determining the merits and necessity of a proposal to adopt, amend or repeal a local boating regulation and in making the decision on adoption, the Board may consider one or all of the following factors:

(A) Staff analysis of the proposed rule change, such as alternative means of resolving the problem, conformance with existing state or federal boating laws, boating use data from Board surveys, law enforcement statistics and data, accident and fatality data, estimated costs of enforcement, an assessment of the adequacy of existing law enforcement efforts and resources, or other pertinent information;

(B) The endorsement or opposition of local affected jurisdictions and authorities;

(C) Alternatives to the proposed rule change including approaches such as education, information, signing, voluntary restrictions and/or increased law enforcement of existing laws;

(D) Whether or not the proposed rule change is supported by an adopted management plan of a local, state, tribal, or federal agency;

(E) The degree to which the proposed rule change, if accepted and adopted, would protect public safety, property, water quality, fish and wildlife resources, or reduce excessive congestion and conflict between users, or promote uniformity of boating laws;



(F) Whether or not the proposed rule change can be effectively enforced;

(G) The cost to implement and enforce the proposed rule change.

(h) The Board may adopt rules as proposed, adopt the rules as revised, deny the proposal, or defer the proposal to a subsequent meeting.

(8) Board staff will notify initiators of the proposals of the Board's action on the proposal within ten working days following Board action.

(9) Nothing in this section shall in any way limit any rights conferred under ORS 183.390 and OAR 137-010-0070.

(10) Nothing in this section shall in any way limit or restrict the Board's authority to adopt, amend or repeal boating regulations at times other than those prescribed.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.175

Hist.: MB 11-1996, f. & cert. ef. 12-05-96

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