



REGULATING BOATING ON LOCAL WATERS

The State Marine Board's Procedures for Adopting, Amending and Repealing Rules

Recreational boaters in Oregon are subject to a variety of laws, regulations and rules. The U.S. Coast Guard and the Oregon State Marine Board each have the authority to make and to enforce boating laws, from the type of equipment that is required to be on board a vessel to general navigation rules. Many laws are universal and apply throughout Oregon, whether a boat is on the ocean, a reservoir, a river or bay.

Some laws are intended to apply only to a specific waterbody or portion of a waterway. These boating regulations are called local or special rules and generally restrict how a boat can be operated, including its speed, direction, motor size or type, and the like. They can be found in Chapter 250 Division 20 of Oregon Administrative Rules (OAR).

In November 1996, the Oregon State Marine Board adopted new procedures for how it will make and change administrative rules that affect recreational boats on specific bodies of water or local areas on waterways. The intent of the new procedures is to consolidate requests as a part of an annual submittal, review, and consideration cycle. The full text of these procedures can be found in OAR Chapter 250, Division 19. The following questions and answers summarize these procedures.

How are boating regulations initiated?

Any citizen or group of citizens can request that the Marine Board adopt, amend, or repeal a boating regulation for a specific body of water through a petition. Petitions must be addressed to the director or chair of the Marine Board and include the following:

- (a) 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;
- (b) specific proposed language for the rule, with proposed deletions shown in brackets and any proposed new language shown in boldface;
- (c) a detailed yet concise statement of the problem, conflict, or damage and the reasons for and the general effects of the proposed rule, and;
- (d) all propositions of law the petitioner asserts.

Petitions not complying with these requirements may be returned by the director.

Requests for new rules or changes in existing rules may also originate from public entities or local officials, such as a city, county, port, district or state or federal agency that are familiar with the waterbody or have some jurisdiction over the land or water. These requests are usually done by a resolution of the governing body adopted at a regular public meeting and subsequently transmitted to the Marine Board.

Board rules require that requests from public entities contain the following information about the waterway and the proposed regulation to the extent that the information is relevant to the requested rule:

- (a) **physical characteristics of the waterway** —size in acres, shoreline length, width, depth, etc.;
- (b) **natural characteristics of the waterway** —aquatic and terrestrial flora and fauna (resident and migratory), soils, sediment, water quality, and threatened or endangered species;
- (c) **natural and artificial obstructions or hazards to navigation**—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** —boat ramps, floats, docks, piers, marinas, pump-outs, fuel docks, floating homes, boat houses, house boats, moorages, and water-ski courses/jumps;
- (e) **publicly owned lands** —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, or 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** —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 any user 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** — 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, land ownership patterns;
- (l) **a map of the waterway showing key information to support the request** —traffic patterns, problem or conflict areas, and the area to be subject to the proposed boating restriction;
- (m) **a description of public input received** —results of meetings or hearings, advisory committees, letters and phone calls, management plans, and contacts received from government agencies;
- (n) **an analysis of alternatives** to the requested rule including law enforcement strategies, signs, publications, outreach or training/education, 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.

When can requests for boating regulations be submitted to the Marine Board?

A request to the Board for a local boating regulation may be submitted at any time. However, the Board will normally review and consider new local boating regulations or changes to existing local boating rules only once a year. The following time table will be used by the Board in handling requests for local boating rules.

- Completed requests must be received by the **first working day of April**.
- Within **30 days**, the director will either deny the request or proceed with proposed rule-making.
- The Board will publish for public review and comment a list of proposed local boating rules accepted by the director. Public notice will be formally placed in the **June** issue of the Secretary of State's Bulletin.
- During the **summer** months Board staff will consult with boating law enforcement and safety personnel, local officials, clubs, organizations, and interested individuals to analyze the proposed rule changes and develop recommendations to the Board. If necessary, Board staff will conduct local public hearings or workshops on proposed rule changes.
- Proposed rule changes along with staff recommendations will be presented to the Board in **September** or regularly scheduled meeting in a subsequent month.
- If approved by the Board, proposed rules can become effective after the Board meeting **upon filing with the Secretary of State**.

What kind of boating regulations does the Board have the authority to enact?

The Board's regulatory authority includes, but is not limited to enacting the following kinds of restrictions:

- speed limits;
- designation of moorage areas;
- motor type and/or horsepower or thrust;
- type of watercraft allowed;
- direction of watercraft travel;
- time of day, day of week, or seasons of operation;
- anchoring;
- water-skiing, direction, safe take-off and landings, etc.;
- boat exclusion areas, and;
- equipment required to be carried on a boat or persons using a boat.

In addition, the Board may restrict recreational watercraft in other lawful ways. Restrictions adopted by the Board may be permanent, temporary, or emergency.

The Board may regulate recreational watercraft on all Oregon waters and, in fact, there are many local rules already in effect on waterways around the state. The Board generally limits its interest to waterways where there is dedicated public access use by general boating public.

The Board does not normally regulate waterways surrounded exclusively by privately owned lands, are small and have limited public use, or are generally inaccessible to the boating public.

What kinds of boats are subject to Marine Board regulations?

Restrictions on recreational boats and boat operations adopted pursuant to this rule may apply to recreational watercraft, including non-motorized boats and boats used for commercial recreation activities, such as guided trips. Watercraft used for commercial non-recreational activities are not affected by these restrictions unless specifically included by reference. Commercial recreational tour boats subject to inspection and licensing by the U.S. Coast Guard are not subject to rules adopted pursuant to this Division unless they are specifically included by reference.

Local boating regulations adopted by the Board also do not normally apply to:

- watercraft used for the law enforcement activities of authorized public safety agencies;
- search and rescue activities conducted by or under the direction of these agencies, and;
- watercraft used for administrative or management functions performed by public agencies with jurisdiction over the subject waters or adjacent lands.

What happens to proposed local boating restrictions if the Board considers them?

When a proposed boating regulation is considered by the Board, the Board has a variety of options. The Board may decide that the proposed regulation is not appropriate or necessary and deny the request. If the Board feels that more information is needed before it can decide, it could hold the request and consider it again at a future meeting.

The Board, at its discretion, could also decide to alter the form of the proposed regulation. They might determine, for instance, that a requested 10 MPH speed limit should be 5 MPH instead, that year-round restrictions could be enacted as seasonal restrictions, and the like.

If approved by the Board, the rule—whether new, an amendment, or the repeal of an existing rule—can take effect as soon as the final rule is filed with the Secretary of State. Once adopted, administrative rules become a part of state boating law and can be enforced by any peace officer. Violations of local boating regulations are generally Class B infractions, carrying a \$99 bail and a fine not to exceed \$350.

Are there alternatives to additional regulations?

It is the policy of the State Marine Board to promote multiple use and enjoyment of waters of the state for a variety of recreational 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 recreational boating.

The Board will seek to resolve problems arising from or between recreational 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 recreational boats.

At times, it is not possible to resolve problems and conflicts and new laws are necessary. It is the policy of the Board to exercise its regulatory authority based upon sufficient information, public testimony or evidence which establishes a demonstrated need to enact local boating restrictions. The Board will also seek the concurrence and recommendations of affected local jurisdictions and authorities before adopting regulations for local waterways.

**PROCEDURES FOR ADOPTING, AMENDING AND REPEALING
LOCAL AND SPECIAL RULES**

DIVISION 19

Policy

250-019-0010(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 recreational 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 recreational boating.

(2) The Board is authorized to regulate through administrative rules recreational 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.

(3) The Board will seek to resolve problems arising from or between recreational 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 recreational boats.

(4) It is the policy of the Board to exercise its regulatory authority based upon sufficient information, public testimony or evidence which 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.

Definitions

250-019-0020 For the purposes of 250-19-010 to 250-19-0090, 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 250-16-001(5-7).

(4) "Procedural Rules" means procedures for rulemaking as outlined in OAR 250-01-000, 250-01-005 Model Rules of Practice and Procedure, and 250-01-030.

(5) "Recreational boating" means non-commercial use of a watercraft as a means of transportation and for recreational purposes such as fishing, cruising, sailing, diving, water-skiing, and hunting, etc. In this section, it also refers, unless otherwise stated, to numerous watercraft types including registered motorized boats and sailboats, personal watercraft, canoes, rafts, kayaks, row boats, skiffs, sculls, shells, float tubes, and other non-motorized vessels.

(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.

Statutory Authority

250-019-0030(1) The Board's authority to regulate recreational 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 subdivision 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 recreational 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.

Scope

250-019-0040(1) The Board may regulate recreational watercraft on all waters of this state. The Board's primary interest lies in waterways where public access for recreational 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 recreational boats and boat operations adopted pursuant to this rule shall apply to recreational watercraft, including boats used for commercial recreation activities, such as guided trips. Watercraft used for commercial non-recreational activities are not affected by these restrictions unless specifically included by reference. Commercial recreational tour boats subject to inspection and licensing by the U.S. Coast Guard are not subject to rules adopted pursuant to this Division unless they are specifically included by reference.

(4) Rules adopted by the Board to restrict recreational 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.

Existing Laws

250-019-0050 Nothing in this division shall change, amend, or alter any duly established laws or rules contained in Title 61, Chapter 830 of the Oregon Revised Statutes or Chapter 250 of Oregon Administrative Rules, except to add this division in its entirety.

Types or Methods of Regulations Used

250-019-0060(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 recreational watercraft and/or their operation in other lawful ways.

(4) Restrictions on recreational 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.

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

250-019-0070(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 137-01-070.

(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.

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

250-019-0080(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 O.A.R. 137-07-070.

(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 250-01-000 (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 830.175

Hist.:

Stat. Imp. ORS 830.175