

Minutes were approved by the Marine Board January 12, 2012



Meeting Minutes
Oregon State Marine Board Meeting
October 25, 2011
Eugene, Oregon

Chair George Tinker called the October 25, 2011 meeting of the Oregon State Marine Board to order at 6:02 pm.

Board Members present: Rick Allen, Brian Carroll, George Tinker, Jen Tonneson and Jean Quinsey

Staff Present: Director Scott Brewen, Randy Henry, Janess Eilers, Ashley Massey and June LeTarte

Chair Tinker announced that this meeting is a public hearing, with Board deliberation to follow, on the proposed Outfitter & Guide program rules.

Scott Brewen, Director, elaborated that this is a special meeting of the Marine Board to solicit comment on the proposed Outfitter & Guide rules. Following public comment, the Board will consider adoption of the rules this evening. Director Brewen turned the meeting over to Mr. Randy Henry.

Consideration of Proposed Rules for Division 016 Outfitters and Guides

Mr. Randy Henry, Operations Policy Analyst, briefed the Marine Board. This is the first time since 1984 that staff has reviewed the Outfitter and Guide rules. The agency held ten informational meetings throughout the state to review the rules and had more than 140 attendees. The Guide Advisory Committee, as identified in statute, participated. Guide and Outfitter input resulted in draft rules, and for future legislative consideration, statutory recommendations. Key points from the Guide Advisory Committee discussion included improved program management and increased law enforcement.

In June 2011, the Board approved the initiation of rulemaking. With full support from the Guide Advisory Committee, OSP and Oregon Department of Fish & Wildlife, staff is proposing repealing the current rules and re-writing them for clarity and removal of statutory language. Rules were open for public comment on September 1, 2011. This is the third public rule hearing scheduled. The previous meetings in Bend and Newport had low turn-out. Three written comments of support, from Guide Advisory Committee members, were received and shared with the Board.

Mr. Henry stated that Herb de Klerk wrote that he generally supported the proposed rules, but had concerns about the "guide boatsman trainee" and the "fee increase." Mr. Henry contacted him and explained the definition of "guide boatsman trainee". Oregon Administrative Rules do not address fees. Fee increases would need to be addressed through legislative action.

There is large support from guides to improve the ability to sanction guides and outfitters for significant infractions. Staff is proposing language to address this issue to include violations of boating rules and general mischief. Guides and Outfitters support the sanctions of problem guides.

Charter Boat operator issues were not addressed at this time. Mr. Henry briefed the Board on recent OSP law enforcement cases. Discussion on fines followed. Mr. Henry stated that fines may be significant but rarely are they enforced.

Mr. Henry noted the following e-mails received into the record:

Val and Gary Early, Early Fishing Inc.

E-mail dated October 24, 2011, stating that they are in favor of proposed changes to the administrative rules. Look forward to additional changes through the legislative process in 2012.

Brian Sykes, Ouzel Outfitters

Reviewed proposed rule changes and is pleased with the provisions and agree with the changes.

Bob Rees, President

NW Guides and Anglers Association

E-mail dated October 24, 2011, stating the NW Guides and Anglers Association fully supports the proposed rules and advocates for their adoption.

Bob Rafalovich

E-mailed dated October 25, 2011, opposed a change in the law which would require outfitters to hire only "state licensed" (registered) fishing guides.

Lt. David Anderson, OSP Fisheries, Special Investigations Unit, was present and addressed the Board. Appreciated the opportunity to partner with the Marine Board. Several troopers reviewed and commented on the proposed rules. OSP supports the proposed administrative rules and also the proposed changes that may be forwarded through the legislature. OSP had conversations with the Marine Board on how OSP can better address enforcement challenges, especially as they relate to unlicensed guides and outfitters, and those guides conducting illegal activities. Discussion on Class A versus Class B violations followed.

Chair Tinker opened the hearing to public comment.

Public Testimony

Tom Hoyt, Eugene, OR

Associate Member of the McKenzie River Guide Association

Ratified, affirmed, and emphasized the support of Steve Shaffer, President of the McKenzie River Guide Association, and encouraged the Board to pass these proposed rules.

Vernon Grieve, Rogue River Guide Association, member of the Guide Advisory Committee

Has been a guide in southern Oregon a long time and communicates with a large network of guides in the area. They are all very much in support of the proposed rules.

Joe Rohleder, Waldport, Charter Boat Operator in Depoe Bay

Lobbyist representing commercial and sport fishing groups. Charter member of the Oregon Guide Association. He hears from the legislators from the North Coast and South Coast, regarding complaints of guide behavior. Almost always it is guides working under the table, not licensed. Hope these proposed rules enable law enforcement and the Marine Board to rectify problems. Must really thank Mr. Henry for all his devotion and time. Personally supports the proposed rules and hope the Board will pass them.

Mr. Allen asked if the north and south guide problems have a lot to do with out-of-state guides. Mr. Rohleder responded, he believes it does. Also, these are areas where there is a lot of fishing opportunities. Believes that a fee increase will make a difference.

Tim Moomey, T-N-T Whitewater Rafting, Upper McKenzie

In full support of proposed rules and would like to be involved. Supports fee increase for OSP enforcement.

Jack Glass, Fishing Guide, Troutdale, member of the Guide Advisory Committee

Randy Henry has done an outstanding job reaching out to the public. Spoke with many guides who support the proposed rules. Want to see more enforcement. The fee increase and insurance isn't a big deal to guides. Would like to see the motorboats carry a higher level of requirement; the US Coast Guard license. Give them five years to get it. This is very important. As new people come into the industry, they will know that they have to have this requirement. Huge benefit to bring up the level of professionalism in the guide industry.

Chair Tinker questioned whether guides operating inside the demarcation line, federally navigable tidal waters, are required to have a Coast Guard license. Mr. Glass responded, that is already the case, and he would like the Marine Board to require the Coast Guard license for all waters in the state. This would include boat inspections.

Chair Tinker asked if guides should have any equipment requirements in excess of the recreational requirements, such as a radio. Mr. Allen asked whether all drift boat operators on the Sandy or John Day would be required to have a Coast Guard license. Mr. Glass responded, they already are required, as they are navigable waterways. Flares are the only extra equipment that has to be carried, if you exceed four miles of visibility. Randy Henry stated that the bulk of the guides operate in navigable waters and 70-80% of guides who operate motorboats already have the Coast Guard license.

Chair Tinker stated that by adopting their standard, if the Coast Guard changed their requirements then Marine Board would have to follow. Director Brewen observed that it would take an act of Congress to change Coast Guard requirements.

Ms. Tonneson stated the biggest concern she is hearing is regarding the fee increase and questioned whether \$150 be a hardship. Mr. Glass responded that \$150 is more acceptable to the guides versus Representative Krieger's proposal of limited entry.

Vernon Grieve, Rogue River Guide Association

Readdressed the Board. He has spoken with a lot of guides in his area and most would favor having the Coast Guard license requirement.

Chair Tinker closed public testimony at 7:14 pm.

Mr. Henry readdressed the Board. He appreciated the support of the Guide Advisory Committee. Board discussion followed. Outfitter and Guide fees are a designated fund and will not be addressed in administrative rulemaking. Rather, the proposed rules offer clarity to sanctions and definitions and help make enforcement more viable. As the Guide Advisory Committee continues to meet, the Coast Guard license requirement will be discussed. Mr. Henry thanked Janess Eilers, Registration Manager, for her expertise in preparing the proposed rules and her on-going work with the outfitters and guides.

Staff recommended the Board repeal OAR 250-016-001 through OAR 250-016-0015 and adopt proposed rules OAR 250-016-0020 through OAR 250-016-0085, effective November 1, 2011.

Mr. Allen made a motion to adopt the staff recommendation, as presented. Mr. Carroll seconded motion.

Board discussion followed. Chair Tinker asked staff to specify the CPR requirement in OAR 250-016-0035. Janess Eilers clarified that the guides are required to have both first aid and CPR. The applicant affirms that every employee has the certification.

Chair Tinker asked whether the Coast Guard license will be addressed in these rules. Mr. Henry responded, it will not, as that particular action would require a statutory change. The license issue will be discussed and considered in the Guide Advisory Committee.

Chair Tinker was concerned about the equipment requirements, especially in tidal waters, in that, anchors and radios not required. This issue will also be considered in the Guide Advisory Committee. Ms. Eilers clarified the agency's authority is to register guides, not license their boat and equipment.

Mr. Allen augmented his original motion to include CPR language in rule OAR 250-016-0035. Mr. Carroll seconded motion. Motion passed unanimously.

Chair Tinker adjourned the meeting at 7:28 pm.

Respectfully submitted,

June LeTarte
Executive Assistant