

I am writing to express my qualified support HB 2695 because I feel that it is time that the Oregon Legislature provide specific guidance regarding the composition of the Oregon State Marine Board.

#### 1. Why the Legislature Needs to Provide Guidance on the Composition of the Marine Board.

The Oregon Legislature has not provided legislative guidance regarding the composition of the Marine Board for the past sixty years and it is starting to show. The Marine Board was created in 1959 when Oregon was inhabited by 1.75 million people and the dominant concerns about recreational boating were safety and the administration of boat titles. Motorboats have become larger and more powerful since then and water bodies are more congested and used far more diversely. In light of these societal changes, the composition of the Marine Board needs to be defined by statute to ensure that it is better equipped to consider the welfare of the public as a whole. Expanding the number of members would also facilitate making better decisions.

#### 2. What the Marine Board Is Doing Right.

The Marine Board should be commended for the many things that it is doing well. Among them are treating nonmotorized boating as a legitimate activity (as opposed to treating it as a problem) and working to improve boating facilities throughout the state. The registration of boats and administration of the program for waterway access permits likewise runs smoothly. It has also done a good job at issuing press releases and conducting campaigns to promote the wearing of life jackets, although its staff has acknowledged that such efforts are ineffective at actually increasing such wear in the absence of rules.

#### 3. Where the Marine Board Needs to Enhance Its Capabilities.

The two major areas where the Marine Board has fallen short are failing to give adequate consideration to the effects of recreational boating on the environment and its reluctance to use its rulemaking authority to improve boater safety. As best I can tell, the current informal criteria for the appointment of the members of the Marine Board are their enthusiasm for boating, their geographic location, and their experience in specific boating disciplines. Although there is nothing inherently wrong with these criteria, they are not sufficiently broad to ensure that all the matters in which boating affects the State's water bodies receive adequate consideration.

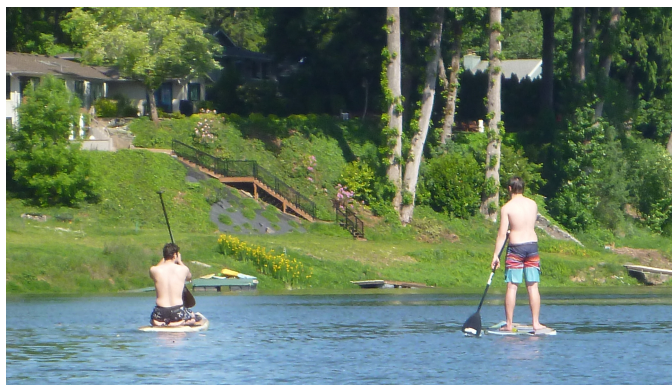
#### 4. The State Needs to Better Address the Environmental Issues Associated with Boating.

In January 2020, the National Marine Fisheries Service sent a letter expressing concern that the Marine Board "has paid little attention to the impacts that wake sports have on aquatic life, including salmon and steelhead species designated as threatened under the Endangered Species Act (ESA), and their critical habitats." Although this letter was an obvious wake-up call to the State of Oregon, the Marine Board hit the snooze button and barely gave lip service to environmental issues when it dealt with wake boat issues during the year that followed.

Similarly, the Clean Water Act requires states to adopt water quality standards and set criteria designed to protect beneficial uses (the U.S. Environmental Protection Agency oversees this process). Despite evidence in the form of videos and photographs documenting blatant exceedances of the State's turbidity standards in the Newberg Pool, the Marine Board has failed to consider Oregon's antidegradation policy as set forth at OAR 340-041-0004 in its discussions about wake boat issues.<sup>1</sup> Failure to address the effects of recreational boating on species listed under the Endangered Species Act and the effects on water quality is an open invitation for intervention by the federal government. The Marine Board needs to expand its membership beyond persons who are enthusiastic about promoting boating so that it can duly consider the totality of the effects of boating on the State.

#### 5. More Heterogenous Members Would Likely Facilitate Better Decisions Regarding Safety.

In 2020, the five members of the Marine Board achieved the dubious distinction of presiding over the highest number of boating fatalities that Oregon has suffered in over three decades. By the end of May, two motorboat operators and five paddlers had died after falling off of or capsizing their boats in cold water. Despite the fact that each boater likely would have survived had they been wearing life jackets, the Board's only substantive attention to addressing this danger in 2020 took place at its July meeting when it voted 4-1 to deny a rulemaking petition that requested a rule that would require paddlers to wear life jackets during the months when the State's waters are dangerously cold. Instead of proceeding to adopt a rule, the Board decided to hold a workshop in January 2021, by which time an additional eighteen people in boats, two minors wading in shallow water, and one would-be rescuer had died in boating incidents. Although the workshop lasted 2 hours and 47 minutes, the Marine Board failed to chart a clear course for taking action to reduce fatalities related to boating.



Paddleboarders, Willamette River, May 9, 2020  
Air Temperature: 85° F Water Temperature: 57° F

---

<sup>1</sup> At its October 21, 2020 meeting, one Board member made a motion to collaborate with other governmental agencies on the erosion and environmental impacts of recreational boats in the stretch of the Willamette River from the Waverly Marina to the Willamette Falls. The motion wasn't even seconded.

Previous Marine Boards seem to have had little difficulty in adopting rules that made boating safer. For example, in 1990 the Marine Board adopted a rule that requires persons on personal watercraft (aka jet-skis) to wear life jackets and in 1998 it did the same for children age 12 and under.<sup>2</sup> Part of the reluctance of the current members to use the Marine Board's rulemaking authority to promote safety may be attributable to diffidence regarding using its statutory authority to regulate the wearing of life jackets and part may be due to a bias on the part of some of its members against regulating unsafe behavior. However, studies have found that groups consisting of individuals with heterogeneous opinions and beliefs are less likely to engage in biased decision making. As noted in the October 2020 Board Book, no one at the July meeting disputed that increased life jacket wear would save lives, but concerns were expressed that requiring paddlers to wear life jackets during the cold-water months could be considered an affront to personal freedom. That being said, although Oregonians cherish certain freedoms, the freedom to die a horrific death by drowning is not one of them.<sup>3</sup>

#### 6. My Reservation About HB 2695 As Introduced.

My primary reservation regarding HB 2695 pertains to the provision in Section 1 of the bill which would create a subsection (6) to ORS 830.105 requiring the Marine Board to take testimony on matters during the same public meeting in which the matter is being considered. My concern with this provision is that the Marine Board should have the discretion to decide when it takes public comment. I would note that ORS 183.335 provides the public with substantial opportunities to submit views and comments pertaining to proposed rules and that the statute does not prohibit substantive dialogue between an agency and the public. The staff of the Marine Board did an excellent job with respect to following the requirements of ORS 183.335 during the recent rulemakings pertaining to towed water sports, during which time the Marine Board received 1118 pages of written comments and its staff heard at least four hours of oral testimony. Although I appreciate the concept embodied in subsection (6), I am concerned that requiring the Marine Board to listen to extensive public testimony at its meetings would likely do more to delay and impede the adoption of badly needed rules than aid in their adoption.

In summary, the legislature should pass HB 2695 to better enable the Marine Board to address environmental and safety issues. However, it should not impose a potentially cumbersome administrative requirement that falls outside the scope of ORS 183.335.

s/Bert P. Krages II

---

<sup>2</sup> During the same time frame, the Marine Board adopted rules that restricted personal watercraft to slow-no wake speeds within 200 feet of swimmers and 100 feet of anchored or nonmotorized craft. Despite the much larger wakes made by wake boats, the Marine Board has not considered similar restrictions for those boats.

<sup>3</sup> Life jackets can be viewed as the boating equivalent of the seat belts found in motor vehicles. The citizens of Oregon showed that they do not object to common-sense safety rules when they passed Ballot Measure 9 in 1990 and thereby required all drivers and passengers in motor vehicles to wear seat belts.