

Agenda Item C Implementation

Aquatic Invasive Species Prevention Program

Background

01. HB 2220 was passed in late June by the Oregon Legislature and signed by the Governor in July. The bill creates the Aquatic Invasive Species Prevention Program that will bolster prevention efforts, law enforcement and coordination statewide for aquatic invasive species susceptible to spread by recreational boating, such as quagga and zebra mussels not yet in the state, and Eurasian watermilfoil, New Zealand mud snails and other harmful species already established in the state. The legislation establishes a \$5 surcharge on boat registrations in Oregon, a \$5 annual permit fee on manually powered boats 10 feet or longer, and a \$20 annual permit fee on out-of-state power boats. It also establishes a fine of up to \$6,250 if a person knowingly transports an aquatic invasive species.
02. Fees gathered by the Marine Board will be deposited into the Aquatic Invasive Species Prevention Fund to administer the program.
03. The funds will be split between the Marine Board and the Oregon Dept. of Fish & Wildlife. At ODFW, five mobile teams of invasive species prevention specialists will be funded to work regionally across the state, performing watercraft inspections at key boat ramps or border areas, providing outreach and education, working with tournament organizers and coordinating closely with law enforcement on prevention efforts. Additional funds will support county and State law enforcement efforts aimed at invasive species prevention, enforcement and investigation. The Marine Board will hire three staff persons to work with the accounting, information technologies and statewide coordination of invasive species prevention efforts.

Rule Development

04. HB 2220 provides authority to the Marine Board to adopt rules “adopt rules for the implementation and administration of sections 7 to 9 of this 2009 Act, including but not limited to the exemption of certain boats from the requirements of section 7 of this 2009 Act.”
05. Staff formed a working group in August to discuss and guide the drafting of rules to implement HB 2220. Due to the short timeline, the group was not able to meet all at once, but all members were provided opportunity to suggest, comment and review on the draft language before it went out for public comment. Members of the working group included Randy Henry, Chair, OSMB; Rick Boatner, ODFW; Jeff Samuels, OSP; Dale Flowers, OSMB; Lisa DeBruyckere, Oregon Invasive Species Council; David Moskowitz, Confluence Consulting; Dean Bender, Polk County Sheriff; Travis Williams, Willamette Riverkeeper; Larry Brandt, boater, instructor.

Public Notice

06. Notice was printed in the Secretary of State’s Bulletin in September. Draft rules were posted on the Marine Board website on September 1, preceded by a general

news release to print and broadcast media. A public meeting was held on Tuesday, September 22, with two individuals attending. Staff further presented draft rules at the Oregon Lakes Association annual conference in Lincoln City on Sept. 12, at the Oregon Invasive Species Council quarterly meeting on Sept. 23, and performed numerous interviews with KEX (Portland), KBZY (Salem), the Bend Bulletin, Grants Pass Daily Courier, Albany Democrat Herald and others. An editorial printed by the Albany Democrat Herald was also reprinted in several east-side newspapers. Due to information inaccuracies, staff released an opinion-editorial response in late August that also received coverage.

07. Public comment on the proposed rules has been light. Several letters specifically seek exemptions for non-traditional boating uses, such as stand-up paddle boards, or for collegiate sports such as crew. It is important to distinguish that the proposed rules do not address the efficacy of the program or the validity of a \$5 charge. The rules merely provide the ability to structure the fee program, define certain ambiguities and address implementation of the fee in certain situations.
08. Of course, comments were received regarding the concept of the fee itself. Staff received a small number of strongly negative concerns focused on imposing a fee on manually powered boats. The primary focus of these comments were lack of a family exemption – that is, one caller noted that she and her four kids often kayak together and now she would have to buy permits for each of the five kayaks at the cost of \$25 per year. Staff also received calls from boaters – power and paddle boat enthusiasts – strongly supporting the prevention program. Several comments were concerned that the program would be ineffective without mandatory inspection authority implemented at border crossings.

Implementation Preparation

09. Part of implementation of HB 2220 is preparing to hire individuals to fill positions. Legislative Council limited the positions to 18 month limited duration as the rule is phased in. Hiring of the accounting position is now underway to help with the first phase of implementation (collecting fees). Other positions will be filled after January 1. The Oregon Dept of Fish & Wildlife is also developing position descriptions and program details for the mobile inspection teams and the program coordinator. Tentative plans are to place these teams in Salem, Clackamas, Medford, Madras/Redmond and LaGrande. Research on mobile decontamination equipment and other support equipment is now underway. Funds that will come available to law enforcement will primarily focus on officer training, equipment and to help fund response efforts as needed, not the hiring of positions. Staff, working closely with ODFW, will develop extended training programs to be initiated spring of 2010. ODFW expects to have the mobile inspection teams on the ground for the 2010 boating season.

Rule Description

010. Please note that many aspects of the proposed rules are dictated by the legislation. These elements include the 10-foot minimum requirement, the fee structure, the discount schedule for liveries, and the transferability of the prevention permits.

011. Paragraph 5 of the rules restates the statewide requirement for the prevention permit. Paragraph 6 states that for sailboats 12 feet and longer, and all power boats, the registration decal shall serve as proof that the invasive species prevention permit. It is therefore non-transferable.
012. Paragraph 7 defines the carriage requirement for manually powered boats 10 feet or more in length. While operators of these boats must carry a permit, the permit is transferable to any boat they operate. Paragraph 8 states that an out-of-state permit is required for out-of-state motorboats and sailboats 12 feet and longer.
013. Paragraph 9 requires manually powered boat livery operators to register with the Board directly in order to receive the discount noted in the legislation. This allows the Board to document legitimate liveries and prevents non-livery organizations from offering “group discounts” to members. Section B requires the rented boat to be clearly labeled to assist law enforcement in determining if the boat operator to ensure that the operator’s permit matches the livery company’s boat.
014. Paragraph 10 simplifies the permit requirement for clubs or organizations. Because boats in these instances are often used by multiple people – including some in competition situations – it would be more convenient to explicitly allow tags to be purchased for the boat and in the name of the club or organization.
015. Since ODFW’s licensing system will be used to issue permits for manually powered boats, we will also be able to sell them via their Internet site. The temporary permit will be valid for 14 days only, with ODFW delivering the permanent permit generally within 7 days. Paragraph 11 provides authority for a temporary permit to be issued over the Internet.
016. Paragraph 12 addresses forgery or tampering concerns. Paragraph 13 states that the permit is valid for the calendar year.
017. Paragraph 14 exempts certain classifications of boats. This list is consistent with current boat registration exemptions and is very limited. The exemption for eleemosynary boats is described in statute.
018. Paragraph 15 sets the violation as a **Class A Violation**, which is a \$97 ticket.
019. If adopted, these rules will go into effect on January 1. Permits for manually powered boats will be sold beginning December 1. For registered boats, the fee will be automatically applied starting in November.

Proposed Rules

250-010-0650 Aquatic Invasive Species Prevention Permit

Definitions

- (1) “Manually powered boat” means any watercraft as defined in ORS 830.005(2), but not a motorboat as defined in ORS 830.005(6).
- (2) “Aquatic Invasive Species Prevention Permit” means a document issued by the Oregon State Marine Board (Board) or through designated agents that certifies payment to the Aquatic Invasive Species Prevention Fund.
- (3) “Board” means the Oregon State Marine Board.

- (4) “Valid temporary permit” means a temporary aquatic invasive species prevention permit through purchase from a designated Internet agent.

Permit Rules

- (5) A person may not operate a manually powered boat that is 10 feet or more in length, or a motorboat of any length, or a sailboat 12 feet or more in length, on the waters of this state without first obtaining an aquatic invasive species prevention permit from the Board or designated agent.
- (6) The owner of a boat for which fees for a certificate of number or registration under ORS 830.790(1)(a)(b)(c) are required will pay an aquatic invasive species prevention permit surcharge of \$5 per biennium at the time of boat registration.
- (a) The registration validation stickers are in lieu of an Aquatic Invasive Species Prevention Permit as described in section (1).
 - (b) The validation stickers are non-transferable.
- (7) Manually powered boats that are 10 feet or more in length shall have a valid aquatic invasive species prevention permit or valid temporary permit on board when the boat is in use on the waters of this state.
- (8) Out-of-state motorboats and out-of-state sailboats 12 feet in length or more shall purchase and carry a non-resident aquatic invasive species prevention permit on board when in use on waters of the state.
- (9) Operators of manually powered boat liveries may qualify to purchase aquatic invasive species prevention permits at a discounted rate described in ORS 830.990. To qualify for the discounted rate:
- (a) The operator of a boat livery, as defined in ORS 830.005(9) shall register with the Board by documenting current business status as a livery.
 - (b) All boats rented by the livery must be clearly labeled with the livery name.
- (10) Clubs or organizations that possess or own boats for communal use by members, participants, racing teams, or for public educational purposes except as exempted under ORS 830.790(2), may purchase aquatic invasive species prevention permits under the name of the organization or the club’s presiding officer or secretary.
- (a) The aquatic invasive species prevention permit may be attached to or stowed in the boat in a manner allowing it to be easily produced for inspection by a peace officer.
 - (b) For racing shells which compete in organized club or intercollegiate crew races, aquatic invasive species prevention permits numbering not less than the maximum number of boats in use on the water at any given time during a planned event may be held by the event organizer, coach or other designated person at the event site as long as the permits are readily available for inspection by a peace officer.
- (11) The Board or designated agent may issue a temporary aquatic invasive species prevention permit to an individual who pays for the permit using a Board designated Internet agent.
- (a) The temporary aquatic invasive species prevention permit will be valid for 14 days from the date of issue listed on the temporary permit.

- (b) Each temporary permit shall contain a unique number that corresponds to the electronic record for the individual named on the permit and to the annual permit.
- (12) A person is considered in violation of the provisions contained in ORS 830.990. and subject to the penalties prescribed by law when they:
 - (a) Alter an aquatic invasive species prevention permit; or
 - (b) Produce or possess an unauthorized replica of an aquatic invasive species prevention permit; or
 - (c) Exhibit an altered aquatic invasive species prevention permit to a peace officer.
- (13) The aquatic invasive species prevention permit expires on December 31 of the year indicated on the permit.
- (14) The following vessels or classifications are exempt from the requirement to carry an aquatic invasive species prevention permit:
 - (a) State-owned boats
 - (b) County-owned boats
 - (c) Municipality-owned boats
 - (d) Eleemosynary-owned boats
 - (e) A ship's lifeboat used solely for lifesaving purposes
 - (f) Seaplanes
 - (g) The Lightship Columbia
- (15) Violation of the provisions contained in ORS 830.990 is punishable as a Class D Violation.