

A-Engrossed
House Bill 2233

Ordered by the House March 7
Including House Amendments dated March 7

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for State Marine Board)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies laws governing seizure of abandoned vessels. Allows seizure of floating structure that is normally secured to pier or pilings. Allows seizure of derelict vessels. Clarifies procedures for pre-seizure and post-seizure notice.

Creates offenses of failure to remove abandoned vessel and of possession of derelict vessel. Punishes by maximum of six months' imprisonment, \$2,500 fine, or both.

Renames Abandoned Boat Removal and Cleanup Subaccount as Salvaged Vessel Subaccount. Specifies uses of moneys in subaccount.

Clarifies that for purposes of certain environmental laws, threatened spill or release of oil or hazardous material includes spills or releases from ship that is in imminent danger of sinking.

A BILL FOR AN ACT

1
2 Relating to marine vessels; creating new provisions; amending ORS 466.605, 468B.300, 468B.325,
3 830.926 and 830.990; and repealing ORS 830.907, 830.909, 830.912, 830.914, 830.917, 830.919,
4 830.922, 830.924 and 830.927.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. Sections 2 to 12 of this 2013 Act are added to and made a part of ORS**
7 **chapter 830.**

8 **SECTION 2. Definitions. As used in sections 2 to 12 of this 2013 Act:**

9 (1) "Abandoned vessel" means a vessel that has been left without authorization on public
10 or private land, the waters of this state, or any other water.

11 (2) "Derelict vessel" means a vessel that is on the waters of this state and that is:

12 (a) Sunk or in imminent danger of sinking;

13 (b) Obstructing a waterway;

14 (c) Endangering life or property;

15 (d) In danger of becoming an environmental hazard because of leaking fuel, sewage or
16 other pollutants; or

17 (e) A boat that is not seaworthy.

18 (3) "Enforcement agency" means a law enforcement agency, a federal agency, the State
19 Marine Board or any other public body, as defined in ORS 174.109, that has responsibility for
20 land or water on which an abandoned vessel or a derelict vessel is located.

21 (4) "Owner" means a person who has a property interest in a vessel or the right to use
22 or possession of the vessel.

23 (5) "Vessel" means a boat, a boathouse as defined in ORS 830.700, a floating home as

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 defined in ORS 830.700, or any other floating structure that is normally secured to a pier or
2 pilings.

3 **SECTION 3. Authority to seize abandoned vessel or derelict vessel.** (1) An enforcement
4 agency may seize a vessel if the enforcement agency has reason to believe the vessel is an
5 abandoned vessel and an owner does not move the vessel to a place where the vessel can be
6 lawfully kept within the time specified in the notice given under section 4 of this 2013 Act.

7 (2) An enforcement agency may seize a vessel if the enforcement agency has reason to
8 believe the vessel is a derelict vessel and the owner does not correct the problems identified
9 in the notice given under section 4 of this 2013 Act within the time specified in the notice.

10 (3) If an enforcement agency has reason to believe a vessel is an abandoned vessel or a
11 derelict vessel, the enforcement agency may:

12 (a) Enter and inspect the vessel for the purpose of identifying the ownership of the ves-
13 sel.

14 (b) Enter and inspect the vessel for the purpose of assessing whether the vessel poses a
15 threat to life, property or the environment.

16 (c) Secure the vessel in such a manner as to prevent harm to life or damage to property
17 or to prevent the vessel from becoming a hazard to navigation.

18 (d) Take action to mitigate any environmental threat the vessel poses.

19 (e) Salvage, tow and store the vessel.

20 **SECTION 4. Preseizure notice.** (1) Except as provided in section 5 of this 2013 Act, at
21 least seven days before seizing an abandoned vessel or a derelict vessel an enforcement
22 agency shall provide notice by:

23 (a) Attaching a notice to the vessel;

24 (b) If the vessel has or had a certificate under ORS 830.770 or 830.775, mailing notice to
25 the persons last shown as owners of the vessel in the records of the State Marine Board; and

26 (c) Mailing notice to any other person for whom the enforcement agency has obtained a
27 mailing address and who the enforcement agency has reason to believe is an owner of the
28 vessel.

29 (2) The notice required under this section must include:

30 (a) The name, address and telephone number of the enforcement agency.

31 (b) A statement indicating whether the enforcement agency proposes to seize the vessel
32 by reason of being an abandoned vessel, a derelict vessel, or both.

33 (c) The time by which the owner must act to avoid having the vessel seized.

34 (d) A statement indicating that if the vessel is seized, the owner will be liable for the
35 costs of salvage, towing and storage of the vessel.

36 (e) A statement indicating that if the vessel is seized the vessel may be destroyed or sold
37 if the costs of salvage, towing, storage and disposal are not paid.

38 (f) A statement indicating the owner may request a hearing before the enforcement
39 agency seizes the vessel, and the time and manner in which a request may be made.

40 (3) In addition to the requirements of subsection (2) of this section, if an enforcement
41 agency proposes to seize a vessel by reason of being an abandoned vessel the notice required
42 by this section must indicate that:

43 (a) The vessel will be seized unless the owner moves the vessel to a place where the
44 vessel can be lawfully kept within the time specified in the notice; and

45 (b) The owner may be prosecuted for the crime of failure to remove an abandoned vessel

1 if the owner fails to move the vessel to a place where the vessel can be lawfully kept within
2 the time specified in the notice.

3 (4) In addition to the requirements of subsection (2) of this section, if an enforcement
4 agency proposes to seize a vessel by reason of being a derelict vessel the notice required by
5 this section must indicate:

6 (a) The reason or reasons that the enforcement agency believes that the vessel is a der-
7 elict vessel;

8 (b) That the vessel will be seized unless either the problems identified in the notice are
9 remedied within the time specified in the notice; and

10 (c) That the owner may be prosecuted for the crime of possession of a derelict vessel if
11 the owner fails to remedy the problems identified in the notice within the time specified in
12 the notice.

13 (5) An owner of a vessel may request a hearing before an enforcement agency seizes a
14 vessel under sections 2 to 12 of this 2013 Act by submitting a request for hearing to the
15 enforcement agency not more than seven days after the notice required by this section is
16 given. The request must include a statement of the specific grounds on which seizure of the
17 vessel is challenged.

18 **SECTION 5. Seizure without notice.** (1) Nothing in sections 2 to 12 of this 2013 Act affects
19 the ability of an enforcement agency to immediately seize without notice a vessel that re-
20 presents a hazard to navigation or a threat to public health or safety.

21 (2) If an enforcement agency seizes without notice a vessel that represents a hazard to
22 navigation or a threat to public health or safety, and the enforcement agency wishes to dis-
23 pose of the vessel under sections 2 to 12 of this 2013 Act, the enforcement agency shall pro-
24 vide notice as described in section 6 of this 2013 Act.

25 **SECTION 5a. Manner and time of seizure.** (1) An enforcement agency may seize an
26 abandoned vessel or a derelict vessel under sections 2 to 12 of this 2013 Act by:

27 (a) Taking physical control of the vessel by towing or other means;

28 (b) By posting a notice on the vessel that indicates that the vessel has been seized, and
29 giving the name, address and telephone number of the enforcement agency; or

30 (c) Marking a sunken vessel with a buoy that has the name and telephone number of the
31 enforcement agency.

32 (2) An abandoned vessel or a derelict vessel is considered to have been seized for the
33 purposes of sections 2 to 12 of this 2013 Act at the time the enforcement agency takes
34 physical control of the vessel under subsection (1)(a) of this section, posts a notice on the
35 vessel under subsection (1)(b) of this section or marks the vessel under subsection (1)(c) of
36 this section.

37 **SECTION 6. Post-seizure notice.** (1) Not more than seven days after an enforcement
38 agency seizes a vessel under sections 2 to 12 of this 2013 Act, the enforcement agency shall
39 post notice in the form required by this section on any website maintained by the enforce-
40 ment agency and mail a copy of the notice to the persons described in section 4 (1) of this
41 2013 Act.

42 (2)(a) The notice required under this section must include the date by which the costs
43 of salvage, towing and storage must be paid to avoid title to the vessel vesting in the
44 enforcement agency. Except as provided in paragraph (b) of this subsection, the date may
45 not be less than 30 days after the date on which the vessel was seized.

1 (b) If the enforcement agency determines that the value of the seized vessel is less than
2 \$500, the date included in the notice under paragraph (a) of this subsection may not be less
3 than 15 days after the date on which the vessel was seized.

4 (3) The notice required under this section must include a description of the vessel and
5 of any personal property located on the vessel, and state all of the following:

6 (a) That the vessel has been seized.

7 (b) The time of the seizure.

8 (c) The name, address and telephone number of the enforcement agency.

9 (d) The reason the vessel was seized.

10 (e) That the owners of the vessel are liable for salvage, towing, storage and disposal costs
11 incurred by the enforcement agency by reason of the seizure, and the amount of those costs
12 that have accrued as of the date of the notice.

13 (f) That title to the vessel will vest in the enforcement agency if the costs of salvage,
14 towing and storage are not paid, and the date by which those costs must be paid.

15 (g) That the owner may request a hearing, and the time and manner for requesting a
16 hearing.

17 (h) That the owner may challenge the reasonableness of any salvage, towing or storage
18 costs at the hearing.

19 (i) That the vessel and its contents may be immediately reclaimed by presenting proof
20 of ownership or right to possession and payment of the costs that have accrued.

21 (4) Except as provided in subsection (5) of this section, an owner of a vessel may request
22 a hearing after an enforcement agency seizes a vessel under sections 2 to 12 of this 2013 Act
23 by submitting a written request for hearing to the enforcement agency not more than seven
24 days after the notice required by this section is given. The request must include a statement
25 of the specific grounds on which the seizure is challenged, and whether the owner challenges
26 the reasonableness of any salvage, towing or storage costs incurred by the enforcement
27 agency.

28 (5) If an owner of a vessel requested a hearing under section 4 (5) of this 2013 Act, the
29 owner may request a hearing under subsection (4) of this section only for the purpose of
30 challenging the reasonableness of any salvage, towing or storage costs incurred by the
31 enforcement agency.

32 **SECTION 7. Hearing.** (1) If an owner of a vessel requests a pre-seizure hearing as provided
33 in section 4 (5) of this 2013 Act, the enforcement agency may not seize the vessel until after
34 the hearing.

35 (2) If an owner of a vessel requests a hearing as provided in section 4 (5) or 6 (4) of this
36 2013 Act, the enforcement agency shall set a time for the hearing that is no more than seven
37 days after the enforcement agency receives the request. The enforcement agency shall pro-
38 vide notice of the hearing to the person requesting the hearing, and to all other persons de-
39 scribed in section 4 (1) of this 2013 Act.

40 (3) If an owner of a vessel requests a hearing under this section and fails to appear at
41 the hearing, the owner is not entitled to another hearing unless the owner shows good rea-
42 sons to the enforcement agency for the person's failure to appear.

43 (4) An enforcement agency shall conduct a single hearing under this section for all re-
44 quests for hearing that relate to the same vessel.

45 (5) Hearings held under this section may be informal in nature, but the presentation of

1 evidence in a hearing shall be consistent with the standards for presentation of evidence
2 under ORS 183.450.

3 (6) If the owner of a vessel requests a post-seizure hearing under section 6 (4) of this
4 section to challenge the reasonableness of costs incurred by the enforcement agency in sal-
5 vaging, towing or storage of the vessel, costs that were incurred in compliance with laws,
6 ordinances or rules establishing allowable costs for those purposes are reasonable as a mat-
7 ter of law.

8 (7) If an enforcement agency determines after a hearing under this section that seizure
9 of the vessel is not warranted under the law, the enforcement agency shall immediately re-
10 lease custody of the vessel to the owner who requested the hearing and may not charge the
11 owner any costs incurred by the agency in salvaging, towing or storage of the vessel.

12 (8) If an enforcement agency determines after a hearing under this section that seizure
13 of the vessel is warranted, the enforcement agency shall seize the vessel if the vessel has
14 not already been seized and dispose of the vessel as provided in section 9 of this 2013 Act.

15 (9) An enforcement agency shall mail a written statement of the enforcement agency's
16 determination to all owners who requested a hearing under this section.

17 (10) The hearings officer at a hearing under this section may be an officer, official or
18 employee of the enforcement agency but may not have participated in any determination or
19 investigation related to seizure of the vessel that is the subject of the hearing.

20 (11) If the enforcement agency conducting a hearing under this section is a state agency,
21 the determination of the enforcement agency is an order other than a contested case and is
22 subject to review under ORS 183.484. If the enforcement agency conducting a hearing under
23 this section is not a state agency, judicial review of the order is as provided in ORS 34.010
24 to 34.100.

25 **SECTION 8. Liability for costs of salvage, towing and storage.** (1) Except as otherwise
26 provided in sections 2 to 12 of this 2013 Act, the owner of an abandoned vessel or a derelict
27 vessel is liable to an enforcement agency for all costs arising out of salvage, towing, storage
28 and disposal of a vessel seized under sections 2 to 12 of this 2013 Act. Any order imposing
29 liability for those costs is subject to judicial review as provided in section 7 (11) of this 2013
30 Act.

31 (2) If an enforcement agency sells a vessel seized under sections 2 to 12 of this 2013 Act,
32 the liability imposed under this section shall be reduced by the net proceeds of the sale.

33 (3) An owner of a vessel whose only interest in the vessel is a security interest is not
34 liable for costs arising out of salvage, towing, storage and disposal of a vessel under sections
35 2 to 12 of this 2013 Act.

36 **SECTION 9. Reclamation of seized vessels.** (1) At any time before the date specified in
37 the notice given pursuant to section 6 (2) of this 2013 Act, any owner may reclaim the vessel
38 by:

39 (a) Paying all costs incurred by the enforcement agency in salvaging, towing and storing
40 the vessel; and

41 (b) Establishing to the satisfaction of the enforcement agency that the owner is able to
42 move the vessel to a place where the vessel can be lawfully kept.

43 (2) If a vessel seized under sections 2 to 12 of this 2013 Act is not reclaimed in the man-
44 ner provided by this section, title to the vessel and all personal property found in the vessel
45 vests in the enforcement agency, and the enforcement agency may sell or otherwise dispose

1 of the vessel and the property.

2 **SECTION 10. Liability of enforcement agency.** An enforcement agency and any person
3 that an enforcement agency contracts with under section 11 of this 2013 Act are not liable
4 to an owner of an abandoned vessel or a derelict vessel for any damages resulting from any
5 seizure under sections 2 to 12 of this 2013 Act if the enforcement agency complies with the
6 requirements of sections 2 to 12 of this 2013 Act.

7 **SECTION 11. Use of contractor.** An enforcement agency may enter into a contract with
8 any person to carry out the provisions of sections 2 to 12 of this 2013 Act on behalf of the
9 enforcement agency.

10 **SECTION 12. Offenses.** (1) A person commits the offense of failure to remove an aban-
11 doned vessel if the person is the owner of an abandoned vessel and, after notice is given
12 under section 4 of this 2013 Act, the person fails to move the vessel to a place where the
13 vessel can be lawfully kept within the time specified in the notice.

14 (2) A person commits the offense of possession of a derelict vessel if the person is the
15 owner of a derelict vessel and, after notice is given under section 4 of this 2013 Act, the
16 person fails to remedy the problems identified in the notice within the time specified in the
17 notice.

18 (3) An owner of a vessel does not violate this section if the owner's only interest in the
19 vessel is a security interest.

20 **SECTION 13.** ORS 830.926 is amended to read:

21 830.926. [(1) *The Abandoned Boat Removal and Cleanup Subaccount is established within the*
22 *Boating Safety, Law Enforcement and Facility Account. The subaccount shall consist of moneys de-*
23 *posited into the subaccount by the State Marine Board from fees collected pursuant to ORS 830.790*
24 *and 830.850. The moneys in the subaccount are continuously appropriated to the board for the purposes*
25 *specified in this section.*]

26 [(2) *The board may not deposit more than \$150,000 per biennium into the subaccount and may not*
27 *retain more than \$150,000 in the subaccount at any time. After the board has deposited \$150,000 into*
28 *the subaccount under this subsection or any time there is more than \$150,000 in the subaccount, any*
29 *remaining moneys from fees collected pursuant to ORS 830.790 and 830.850 shall be deposited in the*
30 *Boating Safety, Law Enforcement and Facility Account created under ORS 830.140.*]

31 [(3) *If the board or a removing authority has been unsuccessful in collecting reimbursement for*
32 *removal from the water and cleanup expenses from an owner of an abandoned boat, floating home or*
33 *boathouse that imposes an environmental threat or safety hazard to navigation, or the owner's insur-*
34 *ance, the board may use the moneys in the subaccount for:*]

35 [(a) *Paying the expenses of the board in implementing ORS 830.907 to 830.927, limited to the ex-*
36 *penditures associated with the removal and cleanup of an abandoned boat of less than 200 gross tons, an*
37 *abandoned floating home or an abandoned boathouse; or*]

38 [(b) *Paying a removing authority for no more than 75 percent of the costs of the removal and*
39 *cleanup of an abandoned boat of less than 200 gross tons, an abandoned floating home or an aban-*
40 *doned boathouse, including any salvage, towing, storage or disposal costs.*]

41 (1) **The Salvaged Vessel Subaccount is established within the Boating Safety, Law**
42 **Enforcement and Facility Account created under ORS 830.140. The subaccount shall consist**
43 **of moneys deposited into the subaccount by the State Marine Board from fees collected**
44 **pursuant to ORS 830.790 and 830.850. The moneys in the subaccount are continuously appro-**
45 **riated to the board for the purposes specified in this section.**

1 (2) The board may not deposit more than \$150,000 per biennium into the Salvaged Vessel
2 Subaccount and may not retain more than \$150,000 in the subaccount at any time. After the
3 board has deposited \$150,000 into the subaccount under this subsection or any time there is
4 more than \$150,000 in the subaccount, any remaining moneys from fees collected pursuant
5 to ORS 830.790 and 830.850 shall be deposited in the Boating Safety, Law Enforcement and
6 Facility Account.

7 (3) The board may use the moneys in the Salvaged Vessel Subaccount to pay the expenses
8 of the board in implementing sections 2 to 12 of this 2013 Act that are associated with the
9 salvage, towing, storage and disposal of:

10 (a) Vessels other than boats that are abandoned vessels or derelict vessels; and

11 (b) Vessels that are boats of less than 200 gross tons.

12 (4) The board may use the moneys in the Salvaged Vessel Subaccount to pay an
13 enforcement agency for no more than 90 percent of the costs of salvage, towing, storage and
14 cleanup of an abandoned vessel or a derelict vessel that has or had a certificate under ORS
15 830.770 or 830.775 and that is:

16 (a) A boat of less than 200 gross tons; or

17 (b) Any other abandoned vessel or derelict vessel that is not a boat.

18 (5) The board may use the moneys in the Salvaged Vessel Subaccount to pay an
19 enforcement agency for no more than 75 percent of the costs of salvage, towing, storage and
20 cleanup of an abandoned vessel or a derelict vessel that has never had a certificate under
21 ORS 830.770 or 830.775 and that is:

22 (a) A boat of less than 200 gross tons; or

23 (b) Any other abandoned vessel or derelict vessel that is not a boat.

24 (6) The board may reimburse an enforcement agency under subsection (4) or (5) of this
25 section for costs associated with an abandoned vessel or a derelict vessel only if the
26 enforcement agency complied with sections 2 to 12 of this 2013 Act in seizing the vessel.

27 (7) The board may use the moneys in the Salvaged Vessel Subaccount to award grants
28 to the state, a city, a county, a water improvement district, a park and recreation district
29 or a port as provided in ORS 830.150 for the disposal of a vessel that has or had a certificate
30 under ORS 830.770 or 830.775 and that the owner has surrendered to an accepting public
31 agency if:

32 (a) The public agency has determined that the vessel was in danger of being an aban-
33 doned vessel or a derelict vessel and was likely to cause damage to the environment or be-
34 come a hazard to navigation; and

35 (b) The decision to accept the vessel was based solely on the public agency's determi-
36 nation under paragraph (a) of this subsection.

37 (8) The board may recover payments made from the Salvaged Vessel Subaccount from
38 an owner of a vessel who is liable for the costs of salvage, towing, storage and disposal under
39 section 8 of this 2013 Act. The board shall deposit all funds recovered under this section into
40 the subaccount in accordance with the provisions of subsection (2) of this section.

41 **SECTION 14.** The Salvaged Vessel Subaccount is a continuation of the Abandoned Boat
42 Removal and Cleanup Subaccount established by ORS 830.926. Moneys contained in the
43 Abandoned Boat Removal and Cleanup Subaccount on the effective date of this 2013 Act are
44 considered to be moneys in the Salvaged Vessel Subaccount.

45 **SECTION 15.** ORS 830.926 is added to and made a part of sections 1 to 12 of this 2013 Act.

1 **SECTION 16. ORS 830.907, 830.909, 830.912, 830.914, 830.917, 830.919, 830.922, 830.924 and**
2 **830.927 are repealed.**

3 **SECTION 17.** ORS 830.990 is amended to read:

4 830.990. (1)(a) Violation of ORS 830.565 by a person operating a manually propelled boat is a
5 Class D violation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565
6 is \$30.

7 (b) Violation of ORS 830.565 by a person operating a motorboat is punishable as a Class D vio-
8 lation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565 is \$50.

9 (2) A person who violates ORS 830.050, 830.088, 830.090, 830.092, 830.094, 830.230, 830.415,
10 830.710, 830.720, 830.770, 830.780, 830.810, 830.850 or 830.855, or rules adopted to carry out the pur-
11 poses of those statutes, commits a Class D violation.

12 (3) A person who violates ORS 830.220, 830.240, 830.245, 830.250, 830.375, 830.475 (4), 830.480,
13 830.785, 830.805 or 830.825, or rules adopted to carry out the purposes of those statutes, commits a
14 Class C violation.

15 (4) A person who violates ORS 830.110, 830.175, 830.180, 830.185, 830.195, 830.210, 830.215,
16 830.225, 830.235, 830.260, 830.300, 830.315 (2) and (3), 830.335, 830.340, 830.345, 830.350, 830.355,
17 830.360, 830.362, 830.365, 830.370, 830.410, 830.420, 830.495, 830.560, 830.775, 830.795 or 830.830, or
18 rules adopted to carry out the purposes of those statutes, commits a Class B violation.

19 (5) A person who violates ORS 830.305 or 830.390, or rules adopted to carry out the purposes
20 of those statutes, commits a Class A violation.

21 (6) A person who violates ORS 830.383 or [830.909] **section 12 of this 2013 Act** commits a Class
22 B misdemeanor.

23 (7) A person who violates ORS 830.035 (2), 830.053, 830.315 (1), 830.325, 830.475 (1), 830.730 or
24 830.955 (1) commits a Class A misdemeanor.

25 (8) A person who violates ORS 830.475 (2) commits a Class C felony.

26 **SECTION 18. Sections 2 to 12 of this 2013 Act, the amendments to ORS 830.926 and**
27 **830.990 by sections 13 and 17 of this 2013 Act, and the repeal of ORS 830.907, 830.909, 830.912,**
28 **830.914, 830.917, 830.919, 830.922, 830.924 and 830.927 by section 16 of this 2013 Act apply only**
29 **to the seizure of vessels on or after the effective date of this 2013 Act. Vessels that were**
30 **seized before the effective date of this 2013 Act shall continue to be governed by ORS 830.907**
31 **to 830.927 and 830.990, as in effect immediately before the effective date of this 2013 Act.**

32 **SECTION 19.** ORS 466.605 is amended to read:

33 466.605. As used in ORS 466.605 to 466.680 and 466.990 (3) and (4):

34 (1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

35 (2) "Cleanup" means the containment, collection, removal, treatment or disposal of oil or haz-
36 arduous material; site restoration; and any investigations, monitoring, surveys, testing and other in-
37 formation gathering required or conducted by the Department of Environmental Quality.

38 (3) "Cleanup costs" means all costs associated with the cleanup of a spill or release incurred
39 by the state, its political subdivision or any person with written approval from the department when
40 implementing ORS 466.205, 466.605 to 466.680, 466.990 (3) and (4) and 466.995 (2) or 468B.320.

41 (4) "Commission" means the Environmental Quality Commission.

42 (5) "Department" means the Department of Environmental Quality.

43 (6) "Director" means the Director of the Department of Environmental Quality.

44 (7) "Hazardous material" means one of the following:

45 (a) A material designated by the commission under ORS 466.630.

1 (b) Hazardous waste as defined in ORS 466.005.

2 (c) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy
3 Facility Siting Council under ORS 469.605 and radioactive substances as defined in ORS 453.005.

4 (d) Communicable disease agents as regulated by the Oregon Health Authority under ORS
5 431.035 to 431.530, 433.001 to 433.045 and 433.110 to 433.770.

6 (e) Hazardous substances designated by the United States Environmental Protection Agency
7 under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

8 (8) "Oils" or "oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil re-
9 fuse and any other petroleum related product.

10 (9) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, as-
11 sociation, municipal corporation, political subdivision, interstate body, the state and any agency or
12 commission thereof and the federal government and any agency thereof.

13 (10) "Reportable quantity" means one of the following:

14 (a) A quantity designated by the commission under ORS 466.625.

15 (b) The lesser of:

16 (A) The quantity designated for hazardous substances by the United States Environmental Pro-
17 tection Agency pursuant to section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as
18 amended;

19 (B) The quantity designated for hazardous waste under ORS 466.005 to 466.385, 466.990 (1) and
20 (2) and 466.992;

21 (C) Any quantity of radioactive material, radioactive substance or radioactive waste;

22 (D) If spilled into waters of the state, or escape into waters of the state is likely, any quantity
23 of oil that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property
24 with oil, but excluding normal discharges from properly operating marine engines; or

25 (E) If spilled on land, any quantity of oil over one barrel.

26 (c) Ten pounds unless otherwise designated by the commission under ORS 466.625.

27 (11) "Respond" or "response" means:

28 (a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release
29 of oil or hazardous material;

30 (b) First aid, rescue or medical services, and fire suppression; or

31 (c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the
32 public health, safety, welfare or the environment which may result from a spill or release or
33 threatened spill or release if action is not taken.

34 (12) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, re-
35 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or
36 waters of the state, as defined in ORS 468B.005, except as authorized by a permit issued under ORS
37 chapter 454, 459, 459A, 468, 468A, 468B or 469, ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992
38 or federal law or while being stored or used for its intended purpose.

39 (13) "Threatened spill or release" means oil or hazardous material is likely to escape or be
40 carried into the air or into or on any land or waters of the state, **including from a ship as defined**
41 **in ORS 468B.300 that is in imminent danger of sinking as evidenced by continuous mechanical**
42 **pumping, by temporary patching or by another observable physical condition that indicates**
43 **a significant risk of sinking.**

44 **SECTION 20.** ORS 468B.300 is amended to read:

45 468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500:

1 (1) "Bulk" means material stored or transported in loose, unpackaged liquid, powder or granular
2 form capable of being conveyed by a pipe, bucket, chute or belt system.

3 (2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, of 300
4 gross tons or more. "Cargo vessel" does not include a vessel used solely for commercial fish har-
5 vesting.

6 (3) "Commercial fish harvesting" means taking food fish with any gear unlawful for angling un-
7 der ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food
8 fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or
9 trade, in commercial channels.

10 (4) "Contingency plan" means an oil spill prevention and emergency response plan required un-
11 der ORS 468B.345.

12 (5) "Covered vessel" means a tank vessel, cargo vessel, passenger vessel or dredge vessel.

13 (6) "Damages" includes damages, costs, losses, penalties or attorney fees of any kind for which
14 liability may exist under the laws of this state resulting from, arising out of or related to the dis-
15 charge or threatened discharge of oil.

16 (7) "Discharge" means any emission other than natural seepage of oil, whether intentional or
17 unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emit-
18 ting, emptying or dumping oil.

19 (8) "Dredge vessel" means a self-propelled vessel of 300 or more gross tons that is equipped for
20 regularly engaging in dredging of submerged and submersible lands.

21 (9) "Exploration facility" means a platform, vessel or other offshore facility used to explore for
22 oil in the navigable waters of the state. "Exploration facility" does not include platforms or vessels
23 used for stratigraphic drilling or other operations that are not authorized or intended to drill to a
24 producing formation.

25 (10) "Facility" means a pipeline or any structure, group of structures, equipment or device, other
26 than a vessel located on or near navigable waters of a state, that is used for producing, storing,
27 handling, transferring, processing or transporting oil in bulk and that is capable of storing or
28 transporting 10,000 or more gallons of oil. "Facility" does not include:

29 (a) A railroad car, motor vehicle or other rolling stock while transporting oil over the highways
30 or rail lines of this state;

31 (b) An underground storage tank regulated by the Department of Environmental Quality or a
32 local government under ORS 466.706 to 466.882 and 466.994; or

33 (c) Any structure, group of structures, equipment or device, other than a vessel located on or
34 near navigable waters of a state, that is used for producing, storing, handling, transferring, pro-
35 cessing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more
36 gallons of oil but does not receive oil from tank vessels, barges or pipelines.

37 (11) "Federal on-scene coordinator" means the federal official predesignated by the United
38 States Environmental Protection Agency or the United States Coast Guard to coordinate and direct
39 federal responses or the official designated by the lead agency to coordinate and direct removal
40 under the National Contingency Plan.

41 (12) "Hazardous material" has the meaning given that term in ORS 466.605.

42 (13) "Maritime association" means an association or cooperative of marine terminals, facilities,
43 vessel owners, vessel operators, vessel agents or other maritime industry groups, that provides oil
44 spill response planning and spill related communications services within the state.

45 (14) "Maximum probable spill" means the maximum probable spill for a vessel operating in the

1 navigable waters of the state considering the history of spills of vessels of the same class operating
2 on the west coast of the United States.

3 (15) "Navigable waters" means the Columbia River, the Willamette River up to Willamette Falls,
4 the Pacific Ocean and estuaries to the head of tidewater.

5 (16) "National Contingency Plan" means the plan prepared and published under section 311(d)
6 of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution Act
7 of 1990 (P.L. 101-380).

8 (17) "Offshore facility" means any facility located in, on or under any of the navigable waters
9 of the state.

10 (18) "Oils" or "oil" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil,
11 sludge, oil refuse and any other petroleum related product and liquefied natural gas.

12 (19) "Onshore facility" means any facility located in, on or under any land of the state, other
13 than submerged land, that, because of its location, could reasonably be expected to cause substantial
14 harm to the environment by discharging oil into or on the navigable waters of the state or adjoining
15 shorelines.

16 (20) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for com-
17 pensation.

18 (21) "Person" has the meaning given the term in ORS 468.005.

19 (22) "Person having control over oil" includes but is not limited to any person using, storing or
20 transporting oil immediately prior to entry of such oil into the navigable waters of the state, and
21 shall specifically include carriers and bailees of such oil.

22 (23) "Pipeline" means a facility, including piping, compressors, pump stations and storage tanks,
23 used to transport oil between facilities or between facilities and tank vessels.

24 (24) "Region of operation" with respect to the holder of a contingency plan means the area
25 where the operations of the holder that require a contingency plan are located.

26 (25) "Removal costs" means the costs of removal that are incurred after a discharge of oil has
27 occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to
28 prevent, minimize or mitigate oil pollution from the incident.

29 (26) "Responsible party" has the meaning given under section 1001 of the Oil Pollution Act of
30 1990 (P.L. 101-380).

31 (27) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

32 (28)(a) "State on-scene coordinator" means the state official appointed by the Department of
33 Environmental Quality to represent the department and the State of Oregon in response to an oil
34 or hazardous material spill or release or threatened spill or release and to coordinate cleanup re-
35 sponse with state and local agencies.

36 (b) For purposes of this subsection:

37 (A) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, re-
38 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or
39 waters of this state except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468,
40 468A, 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law, or except
41 when being stored or used for its intended purpose.

42 (B) "Threatened spill or release" means that oil or hazardous material is likely to escape or be
43 carried into the air or into or on any land or waters of this state, **including from a ship that is**
44 **in imminent danger of sinking as evidenced by continuous mechanical pumping, by tempo-**
45 **rary patching or by another observable physical condition that indicates a significant risk**

1 **of sinking.**

2 (29) "Tank vessel" means a ship that is constructed or adapted to carry oil in bulk as cargo or
3 cargo residue. "Tank vessel" does not include:

- 4 (a) A vessel carrying oil in drums, barrels or other packages;
- 5 (b) A vessel carrying oil as fuel or stores for that vessel; or
- 6 (c) An oil spill response barge or vessel.

7 (30) "Worst case spill" means:

8 (a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated
9 by adverse weather conditions; and

10 (b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather
11 conditions.

12 **SECTION 21.** ORS 468B.325 is amended to read:

13 468B.325. (1) The Director of the Department of Environmental Quality shall have the power to
14 enter upon any public or private property, premises, **ship** or place for the purpose of **investigating,**
15 controlling, collecting, removing, treating, containing or dispersing **a spill or release or threatened**
16 **spill or release of oil or hazardous material** [*which reasonably appears to the director to threaten*
17 *imminent and unlawful entry into the waters of the state, when the person responsible for an oil spill*
18 *or an owner of property on which oil has been spilled fails to act to restrain or to remove the oil*].

19 (2) Damages, other than those caused by the **spill or release or threatened spill or release**
20 **of oil [spill] or hazardous material,** suffered from the actions of the director pursuant to subsection
21 (1) of this section [*shall be*] **are** the responsibility of the state.

22 **SECTION 22.** **The section captions used in this 2013 Act are provided only for the con-**
23 **venience of the reader and do not become part of the statutory law of this state or express**
24 **any legislative intent in the enactment of this 2013 Act.**