



Oregon

Kate Brown, Governor

State Marine Board

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February 1, 2017

House Committee on Agriculture and Natural Resources

Representative Brian Clem, Chair
Representative Susan McLain, Vice-Chair
Representative Sherrie Sprenger, Vice-Chair
Representative Greg Barreto
Representative Sal Esquivel
Representative Caddy McKeown
Representative Karin Power
Representative David Brock Smith
Representative Brad Witt

Dear Chair Clem, Vice-Chair McLain, Vice-Chair Sprenger and Committee Members,

HB 2321 expands regulations to prevent the introduction and spread of aquatic invasive species (AIS) within the state and removes the permit exemption for nonmotorized boats under 10 feet. In support of HB 2321, please accept my testimony into record.

In 2009, the Oregon Legislature passed HB 2220 establishing the Aquatic Invasive Species Prevention Program. This program established a new user fee on boats with dedicated funds to pay for and implement mobile boat inspection teams, public education and outreach efforts. The Legislature also passed HB 2583, making it illegal to launch a boat in Oregon waters with aquatic species attached to the exterior or located within the interior of the boat. In 2011, the Legislature passed HB 3399 which established authority to require a person transporting a recreational or commercial watercraft to stop at a check station for inspection to determine the presence of AIS.

Each year, the Marine Board and Oregon Department of Fish and Wildlife (ODFW) review the effectiveness of the AIS program. The objective is to determine if new or different actions would help reduce the probability of invasive species entering the state and, if necessary, the control or eradication of invasive species.

Since the original law was passed, quagga and zebra mussels are established in 19 additional waterbodies in the Western States. They are present in Western waterbodies within California, Arizona, Nevada, Utah, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas and as of late 2016, Montana.

In 2014, the National Sea Grant Law Center published a report, "Preventing the Spread of Aquatic Invasive Species by Recreational Boats: Model Legislative Provisions and Guidance to Promote Reciprocity among State Watercraft Inspection and Decontamination Programs". Recommendations included draining all standing or captured water and transporting boats with plugs and valves open. These actions facilitate drainage in the boat which minimizes any standing water that can support mussel survival. The recommendations in the report were discussed with the Oregon Invasive Species Council, and language was drafted to support this recommendation.



HB 2321 requires boaters to drain standing water after a boat is removed from a waterbody and before the boat is transported away from the boat launch or retrieval area by opening all drain plugs, bailers, valves or other devices used to control the draining of water from ballast tanks, bilges, livewells and motorwells. Boats must be transported within the state in this manner. The penalty for failure to comply is a Class D violation. Presumptive fines for class D violations are normally \$110. As the intent of the bill is not to penalize boaters but to encourage compliance, a presumptive fine of \$30 for non-motorized boats and \$50 for motorized boats is proposed as an alternative to the normal fine.

HB 2321 will provide an exemption for boats operated by law enforcement and emergency responders. In many cases these boats are launched quickly during an emergency. Failure to reinsert the drain plug could prolong their response time and result in significant safety issues.

Arizona, Kansas, New Mexico, North Dakota and South Dakota all have laws requiring the removal of the drain plug on boats. Colorado, Montana, Nevada, North Dakota, Texas, Utah and Washington all have laws requiring boats to be drained after use in a body of water. Colorado, Idaho and Wyoming all have laws requiring that boats drain all standing water as part of a mandatory boat inspection process.

Current statute does not provide law enforcement authority to require a vehicle transporting a boat that bypasses an open inspection station to return to the station for inspection. Law enforcement officers are often not trained to conduct the inspection and the law does not allow for them to conduct the inspections. The only options available are for drivers to voluntarily return to the station or continue driving with no inspection. This increases the potential for a mussel-fouled boat to be allowed into this state and potentially contaminate waterways.

HB 2321 requires a person transporting a boat to return to an inspection station if stopped by law enforcement for bypassing a mandatory inspection station, provided the station is open and within five miles of the location of the stop. Failure to return to the inspection station is a Class C misdemeanor.

The intent of the law change is to require drivers who bypass the station return to the station for inspection. However, to do so is a means of custody, since the driver is not free to proceed but is under the direction of the law enforcement officer. The Oregon Constitution requires a misdemeanor level offense in order to achieve this end. Consequently, a Class C misdemeanor is the lowest level of offense to charge someone who failed to return to the station. It should be noted that it is currently and will remain a Class D violation for bypassing a station, but there will be no additional action taken if a driver returns to the station for inspection. The Class C misdemeanor is specified for drivers who refuse to return.

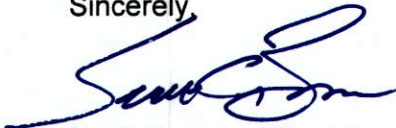
Current law exempts boats less than 10 feet from carrying the AIS permit. The length determination of the law was adopted from another state when the original bill for the program was passed in 2009 and is a source of contention among boaters. Furthermore, the length determination has proven to be difficult to enforce by law enforcement. Removing the under 10 feet exemption requiring all boats under 10 feet to purchase and carry an AIS permit clarifies the intent of the law and raises additional revenue, thereby eliminating the need for a fee increase.

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HB 2321 also clarifies persons 14 years of age and older are required to carry a permit when operating a nonmotorized boat and requires a person to cooperate with the recommended boat decontamination process at a check station.

Thank you for your time. Please allow me to answer any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Brewen", written in a cursive style.

Scott Brewen, Director