

Oregon River Safety & Preservation Alliance

March 10, 2021

House Committee on Agricultural and Natural Resources
State Capitol
900 Court Street NE, Room 453
Salem, OR 97301

Submitted via Oregonlegislature.gov:

<https://olis.oregonlegislature.gov/liz/2021R1/Testimony/HAGNR>

**Re: HB 2555 and HB 2725, Relating to motorboats.
HB 2695, Relating to the State Marine Board.
Testimony of the Oregon River Safety & Preservation Alliance**

Dear Chair Witt and Members of the House Committee on Agriculture and Natural Resources:

On behalf of the Oregon River Safety & Preservation Alliance and its members (collectively, “ORSPA”), thank you for the opportunity to provide testimony on HB 2725, HB 2555, and HB 2695. ORSPA is a nonprofit organization comprised of water sports enthusiasts, paddlers, fisher people, nature lovers, riverfront farmers, and property owners. Our mission is to preserve Oregon’s rivers for everyone by supporting policies that balance the needs of different types of river users, improve safety and protection of people and property (e.g., boats, docks, shoreline), and minimize adverse impacts so that our waterways remain viable as a recreational resource for a wide range of users for generations to come. Our members live adjacent to, work, and enjoy recreational opportunities on the Willamette River and the Newberg Pool, and are thus impacted by the Oregon State Marine Board’s (“OSMB” or “Marine Board”) decision-making. ***ORSPA supports passage of HB 2555-1,¹ HB 2725-2, and HB 2695, and strongly urges the Committee to adopt the same.***

For over a decade, towed watersports boats and the artificial wave energy they create have steadily grown in size, causing harm to the Willamette River.² These harms include: year-round accelerated bank erosion, increased hazard to public safety, increased user conflicts, damage to property (both public and private), and substantial adverse environmental impacts to shoreline, nearshore, and edge habitats. For years, Willamette River homeowners, farmers, business people, recreationalists, and conservation advocates have raised these concerns to the

¹ For the reasons discussed below related to boat weight and artificial wake dissipation, ORSPA opposes the proposed amendment within HB 2555-2, which would set the MLW limit at 6,000 lbs. instead of 4,000 lbs.

² Lillian Hogan, *Weapons of Marine Destruction*, Willamette Week (Feb. 2008), <https://www.wweek.com/portland/article-8488-weapons-of-marine-destruction.html>.

Marine Board. In 2019, the legislature passed HB 2351³ and HB 2352⁴ with bipartisan support. The aim of these bills, in relevant part, was to mandate that OSMB set a reasonable maximum loading weight (“MLW”) limit for towed watersports boats in full consideration of artificial wake impacts to the environment and other users of the Willamette River.

Instead, OSMB’s adoption of the current 10,000-pound MLW limit in October 2019 appears to have been based solely upon the maximum loading capacity of dock infrastructure in the Newberg Pool as well as the largest wake boat models available for purchase at the time of adoption.⁵ OSMB’s reliance on these criteria to establish the MLW limit, and its failure to reasonably consider shoreline protection, damage to private and public property, the ecological health of the river, or evidence of environmental impacts, was inconsistent with the legislative intent underlying HB 2351 and HB 2352 and failed to address public concerns. Even more concerning, the rulemaking itself was inconsistent with federal ESA obligations, as evidenced by the National Marine Fisheries Service’s (“NMFS”) January 16, 2020 letter warning that OSMB “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.”⁶ ORSPA is extremely concerned that the current MLW limit and composition of the Marine Board are insufficient to protect the Willamette River.

HB 2555 and HB 2725 will help protect shorelines, nearshore habitat, and native fish in the Willamette River by reducing artificial wave energy. Specifically, and in relevant part, these bills will adjust the MLW limit of these boats to 4,000 lbs. in the Newberg Pool, and are thus an important first step toward addressing critical weaknesses in OSMB rulemaking related to the Willamette River. Please consider the following relating to HB 2555 and HB 2725:

- There is a direct correlation between boat weight, displacement, and wake energy. Heavy wake boats move slowly, dedicating most of their horsepower toward plowing water into artificial waves. Hence, lowering the MLW limit within the Newberg Pool is an effective way to reduce the known adverse impacts of wake energy on the environment.
- As indicated by expert testimony presented at the Committee’s informational hearing, artificial wakes created by wake sports boats require approximately 400 feet of distance to dissipate. The Newberg Pool portion of the Willamette River, which is between 400 to 600 feet wide, is too narrow in several segments to allow for adequate dissipation of artificial wave energy. As such, a 4,000 lb. MLW limit is a reasonable adjustment to

³ HB 2351 added the current provisions contained within OAR 830.175(4)(a) requiring and empowering OSMB to exercise its authority to protect shoreline and habitat within the Willamette River Greenway.

⁴ ORS 830.640, (2019). This section was added to the Oregon Revised Statutes through adoption of 2019 c.651 § 2 (HB 2352), effective January 1, 2020, which created the Towed Watersports Program (ORS 830.640 - 830.655).

⁵ OSMB staff noted its reliance on dock capacity in establishing the MLW limit during the Committee’s Thursday, March 4, 2021 informational meeting related to HB 2555 and HB 2725.

⁶ See NMFS Letter to OSMB, 1-2 (Jan. 16, 2020) (emphasis added) [*hereinafter* NMFS Letter], available at https://images.saymedia-content.com/image/cs_srgb/MTcwNzg0MjUzMzEzODIwMzEx/oregon-letter.pdf; See also Cassandra Profita, *Feds Say Willamette River Wake Surfing Could Harm Salmon*, Oregon Public Broadcasting, (Feb. 13, 2020) (discussing letter from NMFS to OSMB), <https://www.opb.org/news/article/oregon-willamette-river-wake-surfing-salmon-harm-regulations/>.

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ensure that the boats allowed to participate in towed watersports do not cause irreparable harm to the calm waters and critical habitats of the Newberg Pool. For comparison's sake, Lake Oswego (with a maximum width of 1,584 feet and maximum length of 3 miles) has an enforced maximum boat weight of 3,500 lbs.

- As noted by NMFS, conservation advocates, and during the Committee's informational meeting, nearshore species can be washed ashore by wake boat waves, causing mortality. By reducing the MLW limit and reducing artificial wave energy, associated shoreline and nearshore impacts will decrease. Nearshore habitats on the Willamette River are important nurseries for native fish, and mortality associated with wave energy will decrease. Decreased wave energy will also reduce stranding of threatened Chinook Salmon and Winter Steelhead, which utilize the nearshore environment on their migration as juveniles to the ocean.
- Accelerated erosion, bank destruction, property damage, and public safety hazards will decrease as a result of a reduction in artificial wave energy caused by these large, slow moving boats.

HB 2695 will amend ORS 830.105 to expand the existing OSMB from five to nine members (seven voting and two non-voting), and define relevant qualifications for service on the Marine Board. HB 2695 is an important reform which will enable the Marine Board to make decisions consistent with the statutory mandates contained within OAR 830.175(4)(a)⁷ and ORS 830.640(1)(e)-(f),⁸ as well as agency policy contained within OAR 250-001-0050(1)-(2).⁹ Please consider the following related to HB 2695:

- HB 2695 will create a more representative OSMB, and equip the Marine Board with the expertise and background necessary for carrying out its statutory duties, regulatory obligations, policy goals, and mission regarding environmental stewardship.
- Given the Marine Board's broad authority and jurisdiction with respect to boating policy, adding two voting members to the board and requiring one position for a representative with a background in environmental science and one position for a tribal member will ensure that rulemaking is appropriately anchored in the best available science as well as traditional ecological knowledge.
- The amendments proposed by HB 2695 will create a greater understanding of the impacts of artificial wakes and wave energy on the environment, public and private property, and ensure these environmental impacts are appropriately considered when adopting regulations related to boating in the Willamette River and throughout the state. This is key knowledge and experience crucial to improving OSMB's ability to work on the complex issues of shoreline and habitat protection as well as managing user conflicts.

⁷ OAR 830.175, (2019).

⁸ ORS 830.640, (2019).

⁹ OAR 250-001-0050(1)-(2), (2014).

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- The addition of two non-voting members drawn from representatives of state and/or federal agencies with expertise in fisheries or the environment will help ensure that OSMB's rulemaking does not conflict with state and federal obligations related to endangered species, water quality, embankments, and other protected values on the Willamette River. Five species of salmon and steelhead protected under the ESA are at risk of harm from waves generated from artificial wakes, as are lamprey and other species. As outlined in the Committee's informational hearing, wave energy from wake boats is especially detrimental to river edge ecology, and the many plant, insect, wildlife and fish species that grow, feed, migrate through and/or live in these unique habitats. Adding this expertise will ensure that OSMB's rulemaking is consistent with the statutory duties of state and federal agencies related to environmental protection, and avoid taxpayer liability for interference with the same.
- Expanding the Marine Board and specifying membership qualifications will be a positive step toward improving transparency and increase diversity of representation, consistent with Governor Kate Brown's commitment to ensuring that all Boards and Commissions represent the growing age, racial and gender diversity of the state.

For the above reasons, ORSPA supports HB 2555, HB 2725, and HB 2695 as important first steps to addressing the harmful impacts of artificial wave energy on the Willamette River and improving the representation and decision-making process of the Marine Board. ORSPA strongly supports passage of these bills in order to better protect the Willamette River's ecological function, public safety, and property as well as to ensure appropriate and informed decision-making based on an improved understanding of boating impacts on the Willamette River, environmental science, and traditional ecological knowledge. Thank you for considering our testimony.

Sincerely,

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