

HOUSE BILL REPORT

SSB 5436

As Reported by House Committee On:
Environment

Title: An act relating to the use of antifouling paints on recreational water vessels.

Brief Description: Regarding the use of antifouling paints on recreational water vessels.

Sponsors: Senate Committee on Natural Resources & Marine Waters (originally sponsored by Senators Ranker, Shin, Litzow, Swecker, Tom, Harper, Nelson, Hobbs, Fraser, Rockefeller, White, Kilmer, Conway and Kline).

Brief History:

Committee Activity:

Environment: 3/11/11, 3/24/11 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Prohibits the sale of new recreational water vessels with antifouling paint containing copper beginning January 1, 2018.
- Prohibits the sale and application of antifouling paint containing more than 0.5 percent copper after January 1, 2020, if the paint is intended for use or applied to a recreational water vessel.
- Requires the Department of Ecology (DOE) to study antifouling paints and provide a report to the Legislature.
- Allows the DOE to create a statewide advisory committee to assist the DOE in implementing the requirements of the bill.
- Requires the DOE, in consultation with other state natural resources agencies, to increase educational efforts regarding hull cleaning to reduce the spread of invasive species.

HOUSE COMMITTEE ON ENVIRONMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 11 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Short, Ranking Minority Member; Fitzgibbon, Jinkins, Morris, Moscoso, Nealey, Pearson, Takko and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Harris, Assistant Ranking Minority Member; Taylor.

Staff: Courtney Barnes (786-7194).

Background:

Metal-based antifouling paints are designed to control the growth of organisms such as algae and barnacles on boats. This growth, known as fouling, creates friction that can decrease a boat's speed and fuel efficiency. Most antifouling hull paints contain a copper biocide. Copper-based antifouling paints are designed to leach copper slowly into the water immediately surrounding a boat's hull.

Paint stripping and painting activities are potential sources of pollution from boatyards. Under the Clean Water Act, National Pollutant Discharge Elimination System permits that are issued to boatyards by the Department of Ecology (DOE) contain effluent limitations that restrict the volume and concentration of heavy metals and other pollutants, including copper, that are discharged.

Summary of Amended Bill:

A "recreational water vessel" means any vessel that is no more than 65 feet in length and is manufactured or used primarily for pleasure or leased, rented, or chartered by a person for the pleasure of that person. A recreational water vessel does not include a vessel that is subject to United States Coast Guard inspection and that is engaged in commercial use or carries paying passengers.

Timelines.

Beginning January 1, 2018, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale any new recreational water vessel manufactured on or after January 1, 2018, with antifouling paint containing copper.

Beginning January 1, 2020, no antifouling paint that is intended for use on a recreational water vessel and that contains more than 0.5 percent copper may be offered for sale in Washington.

Beginning January 1, 2020, no antifouling paint containing more than 0.5 percent copper may be applied to a recreational water vessel in Washington.

Enforcement and Penalties.

The DOE may adopt rules necessary to implement the requirements of the bill.

The DOE is responsible for enforcing the requirements of the bill. A person or entity that violates the provisions of the bill is subject to a civil fine of up to \$10,000 per day per violation. Penalties collected by the DOE must be deposited into the State Toxics Control Account.

Antifouling Paint Study.

By January 1, 2017, the DOE must survey the manufacturers of antifouling paints sold or offered for sale in Washington to determine the types of antifouling paints that are available in Washington. The DOE must also study how antifouling paints affect marine organisms and water quality. The DOE must report its findings to the Legislature by December 31, 2017.

The Director of the DOE may establish and maintain a statewide advisory committee to assist the DOE in implementing the requirements of the bill. If the statewide advisory committee is established, the DOE may consult with the committee to prepare its report to the Legislature.

Educational Efforts Concerning Invasive Species.

The DOE, in consultation and cooperation with other state natural resources agencies, must increase educational efforts regarding recreational water vessel hull cleaning to reduce the spread of invasive species. This effort must include a review of best practices that consider the type of antifouling paint used and recommendations regarding appropriate hull cleaning that includes in-water methods.

Amended Bill Compared to Substitute Bill:

The amended bill makes the following changes:

- modifies the intent section;
- changes the date of the prohibition on selling a new recreational water vessel with antifouling paint containing copper and specifies that this prohibition applies to recreational water vessels manufactured on or after January 1, 2018;
- modifies the prohibition on the sale of antifouling paint containing more than 0.5 percent copper;
- creates a prohibition on applying antifouling paint containing more than 0.5 percent copper;
- specifies that the DOE is responsible for enforcing the requirements of the bill, including collecting penalties;
- requires penalties to be deposited in the State Toxics Control Account;
- permits the Director of the DOE to establish a statewide advisory committee to assist the DOE in implementing the requirements of the bill;
- modifies the requirements of the DOE's report to the Legislature;
- permits the DOE to adopt rules necessary to implement the requirements of the bill; and
- adds a severability clause.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill will create a phaseout for antifouling paints containing copper and help boatyards achieve compliance with the copper limitations contained in their boatyard permits. Currently, there are effective alternatives to antifouling paints that contain copper. The phaseout created in the bill will drive innovation and create new alternatives to copper-based antifouling paints. Copper has a significant negative impact on aquatic life, especially salmon. The bill will help protect water quality, salmon recovery, and the overall health of the Puget Sound. The phaseout provisions will minimize the impacts on boat owners.

The bill should be amended to study the effectiveness of antifouling paints one year prior to the phaseout beginning in 2018. The bill should also be amended to address the application of antifouling paints on recreational water vessels, instead of creating a ban on the paint alone. As drafted, commercial, military, and large recreational vessels are not part of the bill. Their exclusion should be discussed further because small boat owners are not the only users of copper-based antifouling paints. The definition of "recreational water vessel" should be amended so the bill would only apply to boats that are no more than 65 feet in length.

(Opposed) The bill should not create a ban on copper paint. If a ban is created, there should be a peer-reviewed study demonstrating the need for the ban. The bill should include a mandatory study prior to implementing any phaseout or ban. The bill includes significant penalty provisions that need to be reconsidered. The bill should be amended to define the term "new recreational vessel."

Persons Testifying: (In support) George Harris, Northwest Marine Trade Association; Bruce Wishart, People for Puget Sound; Chris Wilke, Puget Sound Keeper Alliance; and Kristin Swenddal, Department of Natural Resources.

(Opposed) John Woodring, American Coatings Association.

Persons Signed In To Testify But Not Testifying: None.