

HOUSE BILL REPORT

SSB 6210

As Passed House:
March 4, 2020

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

Brief Description: Concerning antifouling paints on recreational water vessels.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Lovelett, Rolfes and Wilson, C.; by request of Department of Ecology).

Brief History:

Committee Activity:

Environment & Energy: 2/24/20, 2/25/20 [DP];

Appropriations: 2/29/20 [DP].

Floor Activity:

Passed House: 3/4/20, 97-0.

Brief Summary of Substitute Bill

- Requires the Department of Ecology (Ecology) to conduct a review of antifouling paints and submit a report to the Legislature by June 30, 2024.
- Prohibits the sale of copper-based antifouling paints for use on recreational vessels beginning January 1, 2026, if Ecology determines that safer and effective alternatives to copper-based antifouling paints are feasible, reasonable, and readily available.
- Prohibits antifouling paints containing cybutryne on recreational vessels beginning January 1, 2023.
- Authorizes Ecology to collect certain information from antifouling paint manufacturers, wholesalers, and retailers.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass. Signed by 10 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, Doglio, Goehner, Mead, Robinson and Shewmake.

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.

Staff: Emily Williams (786-7291) and Robert Hatfield (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Dan Jones (786-7118).

Background:

Copper-based Antifouling Paint.

Antifouling paints are types of paints applied to the bottom of boats to control the growth of algae, barnacles, mollusks, mussels, and other marine organisms on the hull of the vessel. Antifouling paints come in various forms, including chemical biocides and physical barriers. The most common are copper-based antifouling paints that contain copper biocides that kill fouling organisms by releasing copper into the water around the boat's hull.

Copper pollution in water is regulated under the federal Clean Water Act. Point source pollution of copper from boat yards is subject to permitting requirements by the Department of Ecology (Ecology).

Bans on Copper-based Antifouling Paint.

The sale and application of antifouling paint containing more than 0.5 percent copper that is intended for use on recreational vessels is prohibited beginning on January 1, 2021. In addition, beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor may sell a new recreational water vessel that is manufactured on or after January 1, 2021, if it has antifouling paint containing copper on it. These restrictions do not apply to wood boats.

A recreational water vessel is a vessel that is less than 65 feet in length and is used primarily for pleasure or is leased, rented, or chartered to a person for the pleasure of that person. It does not include a vessel that is subject to United States Coast Guard inspection and is engaged in commercial use or carries paying passengers.

Department of Ecology Report.

Ecology submitted a report on antifouling paint to the Legislature in September 2019, pursuant to Substitute House Bill 2634 (2018). In this report, Ecology made three recommendations. First, it recommended that the Legislature delay the statutory ban on copper-based antifouling paint in order to allow more scientific information to be developed. Second, it recommended that the Legislature grant Ecology authority to collect certain information from antifouling paint manufacturers. Third, it recommended that the Legislature ban the sale and application of antifouling paint containing cybutryne.

Cybutryne.

Cybutryne is commonly referred to as Irgarol 1051 and is regulated as a pesticide by the state and federal governments. Ecology's September 2019 report found that cybutryne is toxic and persistent in the environment. It is often found in antifouling paints, including copper-based antifouling paints.

Summary of Bill:

Review and Report to the Legislature.

The Department of Ecology (Ecology) must conduct a review of antifouling paints and ingredients in antifouling paints that considers:

- information about antifouling paints, including information that Ecology may collect from manufacturers, wholesalers, and retailers;
- information about the feasibility of best management practices;
- information about the feasibility of nonbiological alternatives to antifouling paint; and
- any additional relevant scientific or technical information and studies.

Ecology must submit a report to the Legislature that summarizes the findings of the review by June 30, 2024. The report must be open to public comment before it is submitted. The purpose of the public comment is to obtain expertise, input, and a review of the report's determinations from relevant stakeholders and interested parties. Ecology must consider the public comments before finalizing and submitting the report.

Copper-Based Antifouling Paint.

Copper-based antifouling paints for use on recreational vessels are subject to various prohibitions beginning January 1, 2026, if Ecology determines that safer and effective alternatives to copper-based antifouling paints are feasible, reasonable, and readily available.

If Ecology makes this determination, then beginning on January 1, 2026:

- antifouling paint that contains more than 0.5 percent copper and is intended for use on recreational vessels may not be offered for sale in the state;
- antifouling paint that contains more than 0.5 percent copper may not be applied to a recreational vessel in the state; and
- no manufacturer, wholesaler, retailer, or distributor may sell a new recreational water vessel in the state that is manufactured on or after January 1, 2026, if it has antifouling paint containing copper on it.

These restrictions do not apply to wood boats.

If, by June 30, 2024, Ecology does not determine that safe and effective alternatives to antifouling paints are feasible, reasonable, and readily available, then Ecology must conduct another review. This review must consider relevant studies and information on alternatives to copper-based antifouling paint. Ecology must summarize its findings in a report to the Legislature by June 30, 2029.

Cybutryne.

Beginning on January 1, 2023:

- antifouling paint that contains cybutryne and is intended for use on recreational vessels may not be offered for sale in the state;

- antifouling paint that contains cybutryne may not be applied to a recreational vessel in the state; and
- no manufacturer, wholesaler, retailer, or distributor may sell a new recreational water vessel in the state that is manufactured on or after January 1, 2023, if it has antifouling paint containing cybutryne on it.

Information About Antifouling Paint.

Ecology may collect certain information about antifouling paints and similar products from manufacturers, wholesalers, and retailers, including:

- product names and ingredients;
- information regarding exposure and chemical hazard;
- a description of the function of each chemical used in the product;
- the amount of the chemical used in the product;
- the contact information for the manufacturer; and
- any other information requested by Ecology or that the manufacturer deems relevant to the appropriate use of the product.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Environment & Energy):

(In support) While there is concern about the negative environmental impact of copper, especially its impact on salmon, there is concern that the alternatives on the market are more harmful than copper. This bill implements the Department of Ecology's (Ecology) recommendation in its 2019 report to the Legislature to ban cybutryne and delay the ban on copper. It is important that the ban on copper-based antifouling paints not go into effect in 2021. Delaying the ban for five years best balances the various stakeholder interests. The bill is a carefully crafted compromise between the various stakeholders. All of the parties will benefit from a five-year delay. The delay will allow more time to educate boat owners on nontoxic alternatives that are available. This bill allows for additional scientific research and gives Ecology more time to gather information on alternatives in order to determine whether a copper ban is the appropriate course of action. The information collected in the study will allow Ecology make informed decisions about antifouling paint to avoid regrettable substitutions moving forward.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Environment & Energy): Senator Lovelett, prime sponsor; Kimberly Goetz, Washington Department of Ecology; Peter Schrappen, Northwest Marine Trade Association; and Bruce Wishart, Puget Soundkeeper Alliance.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.