



**RBOC**  
Protecting your boating interests.

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## CALL TO ARMS

May 24, 2011

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Vice President - South

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Vice President - North

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Secretary - Treasurer

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Legislative Advocates  
**Jerry Desmond**  
Executive Vice President

**Jerry Desmond, Jr.**  
Director of  
Government Relations

### SB 623 [Kehoe, copper-based anti-fouling surfaces]

Senate Floor [Senate Third Reading]

Boaters are encouraged to take action now to express their opposition to SB 623 [Kehoe] to their representatives in the California State Senate.

The bill is expected to pass the Senate Appropriations Committee this Thursday, May 26, without a vote and without testimony. The bill will then be taken up on the Senate Floor [Senate Third Reading] between May 27 and June 3. The deadline for the bill to pass the Floor is Friday, June 3.

This bill would prohibit recreational boaters state-wide from using copper-based anti-fouling paints on the hulls of their boats to prevent marine organisms from growing on their hulls.

SB 623 would place into law a statewide ban of copper based hull coatings. The bill would impose:

1. A January 1, 2015 ban on the sale of new recreational boats with anti-fouling paint containing copper, and
2. A January 1, 2019 ban on the use or application of these paints.

Recreational Boaters of California [RBOC] is opposed to SB 623 as amended on April 25 unless the bill is revised to ensure that any deadline upon which the state's recreational boaters will not be able to use copper-based anti-fouling paints does not take effect until there are alternatives that are effective, available, and affordable.

Attached are the following:

1. A letter individual boaters can sign and fax to 916.441.3520 for delivery to the Capitol. From the address you provide, we will identify your Senator and forward the letter.
2. A copy of the current version of SB 623.

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### NOTE

RBOC continues to be engaged in discussions with the author, sponsors and supporters of SB 623 in a good faith effort to determine if the concerns of the boating community can be resolved.

RBOC does not have confirmation that boater concerns, communicated in our March 10 letter and in subsequent negotiations, will be resolved.

Enclosures

Date: \_\_\_\_\_, 2011

Dear Senator \_\_\_\_\_:

As your constituent, I urge you to vote “no” on SB 623 [Kehoe] when this bill is considered on the Senate Floor [Senate Third Reading]. This bill would prohibit recreational boaters state-wide from using copper-based anti-fouling paints on the hulls of their boats to prevent marine organisms from growing on their hulls.

I oppose SB 623 as amended on April 25 unless the bill is revised to ensure that any deadline upon which the state’s recreational boaters will not be able to use copper-based anti-fouling paints does not take effect until there are alternatives that are effective, available, and affordable.

This bill would penalize boaters, who would be directly and most significantly impacted by its provisions. SB 623 would not apply to other significant sources of copper including commercial boats, ships, and military vessels. Instead, the bill targets recreational vessels exclusively.

The bill would impose an estimated average new cost of \$5,000 on boaters for converting their boats to currently available non-biocide coatings. This cost would be imposed on an estimated 200,000 boaters who use anti-fouling paints to protect their boats, for a total mandated expense of at least \$1 billion.

Although SB 623 states that “it is the intent of the Legislature to promote the use of nonbiocide alternative paints,” banning copper paint would do nothing to meet that goal. It would merely drive boaters to use other biocidal coatings that are effective, available and affordable. These currently available alternatives are also more toxic than copper and would cause serious problems if their use becomes widespread.

As a boater, I understand and appreciate the objective of moving towards non-biocide alternative coatings for the hulls of our boats. As a community, we continue to assist in the development and testing of alternatives. SB 623 would replace these collaborative efforts with a statewide ban placed into law. The bill would impose a January 1, 2015 ban on the sale of new recreational boats with anti-fouling paint containing copper, and a January 1, 2019 ban on the use or application of these paints.

The deadlines being proposed do not correspond to any assurance that alternatives to marine antifouling paints containing copper will be effective, available and affordable. While there has been much attention and several studies, rigorous scientific testing and scrutiny have yet to occur and no conclusion can be made. Yet SB 623 does not present incentives to assist in the transition to alternative coatings.

The Department of Pesticide Regulation regulates antifouling paints and is in the process of re-evaluating their registrations. However, SB 623 would ignore that study and enact an outright ban. This would force recreational boaters to replace their antifouling paints with other coatings that are less effective in preventing the growth of marine organisms on boat hulls, that facilitate the transport of invasive species into new bodies of water, that are costly to purchase and apply, and that contain chemicals that would harm the environment.

For these reasons, I urge a “no” vote on SB 623 when it is considered on the Senate Floor [Senate Third Reading] unless the bill is amended.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name [spelled-out]

\_\_\_\_\_  
Street

\_\_\_\_\_  
City \ State \ Zip Code

AMENDED IN SENATE APRIL 25, 2011

**SENATE BILL**

**No. 623**

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**Introduced by Senator Kehoe**

February 18, 2011

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~~An act to add Chapter 8 (commencing with Section 117140) to Part 12 of Division 104 of the Health and Safety Code, relating to public health. An act to add Article 2.7 (commencing with Section 756) to Chapter 5 of Division 3 of the Harbors and Navigation Code, relating to vessels.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Kehoe. ~~Copper in marine paint. Vessels: marine antifouling paint.~~

*Under existing law, the Department of Boating and Waterways regulates the operation and equipment of vessels. The Director of Boating and Waterways administers the department.*

*This bill would prohibit, on and after January 1, 2015, a manufacturer, wholesaler, retailer, or distributor from selling or offering for sale in California a new recreational vessel, as defined, containing antifouling paint that contains copper. The bill also would prohibit, on and after January 1, 2019, the use or application of antifouling paint that contains copper on recreational vessels, except as provided.*

~~Existing law regulates various substances in products, like lead, copper, and mercury, that can lead to public health issues when introduced into the environment.~~

~~This bill, on and after January 1, 2015, would make it unlawful to manufacture, sell, or distribute in commerce in California marine antifouling paints that contain copper. The bill would require~~

~~manufacturers to use the least toxic alternative when replacing the copper in marine antifouling paint.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2 *following:*

3     *(a) Marine antifouling paints are used on vessel hulls to prevent*  
4 *the growth of aquatic organisms, such as barnacles and algae.*  
5 *Most antifouling paints use copper to prevent the growth of aquatic*  
6 *organisms. Copper-containing marine antifouling paints are a*  
7 *source of copper releases in marinas within California estuaries*  
8 *and along shorelines.*

9     *(b) Copper is toxic to many aquatic organisms and plants. It*  
10 *accumulates in water, sediments, and marine plants and animals*  
11 *and can impact the food web in the marine environment by*  
12 *eliminating certain species. Copper is one of the metals listed in*  
13 *the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.) that the*  
14 *state is required to regulate. Numerous bays and harbors*  
15 *throughout California have water quality impairments due to*  
16 *copper, as referenced by the California 2008–2010 303(d) list of*  
17 *impaired water bodies. As such, measures must be taken to reduce*  
18 *impacts on aquatic environments by reducing copper loads in these*  
19 *areas.*

20     *(c) Boating is an important part of the economic and social*  
21 *fabric of California. California has approximately 800,000*  
22 *recreational boats and more than three million people who*  
23 *participate in recreational boating annually. These boaters*  
24 *contribute \$1.2 billion to the state's Gross State Product and have*  
25 *a direct impact on over 24,000 jobs with labor income of \$750*  
26 *million. Any policy affecting boating must ensure that boating*  
27 *continues to be a vigorous part of California life. Therefore, it is*  
28 *the intent of the Legislature that any policy relating to the*  
29 *application or use of paints on vessel hulls be structured in a*  
30 *manner that protects these values.*

31     *(d) Due to the inherent conflict between the need for an*  
32 *antifouling paint that effectively controls the growth of aquatic*  
33 *organisms on vessel hulls and the federal requirements under the*

1 *federal Clean Water Act to protect aquatic environments from*  
2 *pollution, it is the intent of the Legislature to promote the use of*  
3 *nonbiocide alternative paints in order to balance the needs of these*  
4 *conflicting interests.*

5 *SEC. 2. Article 2.7 (commencing with Section 756) is added*  
6 *to Chapter 5 of Division 3 of the Harbors and Navigation Code,*  
7 *to read:*

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*Article 2.7. Marine Antifouling Paint*

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11 *756. For purposes of this article, the following definitions shall*  
12 *apply:*

13 *(a) "Alternative paint" means paint that does not contain any*  
14 *biocide compounds. Alternative paint acts to protect the integrity*  
15 *of a vessel's hull by creating a hard barrier or by creating a slick*  
16 *finish to aid in foul-release properties.*

17 *(b) "Antifouling paint" means paint for a vessel's hull*  
18 *containing compounds to prohibit the attachment and growth of*  
19 *aquatic life.*

20 *(c) (1) "Recreational vessel" means a vessel that is either of*  
21 *the following:*

22 *(A) Manufactured or used primarily for pleasure.*

23 *(B) Leased, rented, or chartered to a person for the pleasure of*  
24 *that person.*

25 *(2) "Recreational vessel" does not include a vessel that is*  
26 *subject to United States Coast Guard inspection and that is*  
27 *engaged in commercial use or carries paying passengers.*

28 *757. On and after January 1, 2015, a manufacturer, wholesaler,*  
29 *retailer, or distributor shall not sell or offer for sale in California,*  
30 *any new recreational vessel containing antifouling paint that*  
31 *contains copper.*

32 *758. (a) Except as provided in subdivision (b), on and after*  
33 *January 1, 2019, it shall be unlawful to use on or apply to a*  
34 *recreational vessel antifouling paint containing copper.*

35 *(b) If the director finds that there are no effective, available,*  
36 *and affordable alternative paints available by January 1, 2019,*  
37 *taking into account durability, lifespan, and cleaning, the*  
38 *prohibition on the use or application of antifouling paint containing*  
39 *copper on a recreational vessel shall instead be operative on and*  
40 *after January 1, 2020 and the director shall publish this finding*

1 *and notice of the delayed operation of the prohibition on the*  
2 *department's Internet Web site.*

3 ~~SECTION 1. The Legislature finds and declares all of the~~  
4 ~~following:~~

5 ~~(a) Copper is toxic to many aquatic organisms and plants. It~~  
6 ~~accumulates in water, sediments, and marine plants and animals~~  
7 ~~and can impact the food web in the marine environment by~~  
8 ~~eliminating certain species. It particularly builds up in areas like~~  
9 ~~marina basins that do not flush well.~~

10 ~~(b) Copper-containing marine antifouling paints used to control~~  
11 ~~fouling growth on boat hulls are a significant source of copper~~  
12 ~~releases in marinas within California estuaries and along shorelines.~~  
13 ~~For example, a major source of copper in the San Diego Bay is~~  
14 ~~from the use of copper-containing marine antifouling paints.~~

15 ~~(c) Limits on the copper content of marine antifouling paints~~  
16 ~~are essential for California cities, counties, and industries to comply~~  
17 ~~with water quality standards and copper total maximum daily loads~~  
18 ~~(TMDL) in California's estuaries as required by the federal Clean~~  
19 ~~Water Act (33 U.S.C. Sec. 1251 et seq.). For instance, limiting~~  
20 ~~copper antifouling paint is a critical part of the TMDL Basin Plan~~  
21 ~~Amendment for the Shelter Island Yacht Basin, which mandates~~  
22 ~~compliance by 2022.~~

23 ~~(d) Without limits on the use of copper in marine antifouling~~  
24 ~~paints, California taxpayers face millions of dollars in federal Clean~~  
25 ~~Water Act compliance costs.~~

26 ~~(e) The San Diego Unified Port District has developed a~~  
27 ~~multi-faceted approach to deal with copper-containing marine~~  
28 ~~antifouling paints, including working with the federal~~  
29 ~~Environmental Protection Agency and the State Water Resources~~  
30 ~~Control Board on grants to research alternatives to copper in marine~~  
31 ~~antifouling paints, working with the public and other interested~~  
32 ~~parties on outreach, education, and development of best~~  
33 ~~management practices in order to reduce the impacts of~~  
34 ~~copper-containing marine antifouling paints, and developing a~~  
35 ~~local ordinance and permit systems to regulate in-water hull~~  
36 ~~cleaning. However, action is needed on a statewide basis.~~

37 ~~SEC. 2. Chapter 8 (commencing with Section 117140) is added~~  
38 ~~to Part 12 of Division 104 of the Health and Safety Code, to read:~~

~~CHAPTER 8. MARINE PAINT~~

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~~117140. (a) On and after January 1, 2015, it shall be unlawful to manufacture, sell, or distribute in commerce in California marine antifouling paints that contain copper.~~  
~~(b) Manufacturers shall use the least toxic alternative when replacing copper in marine antifouling hull paint.~~

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