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Fish and Game Commission



*Wildlife Heritage and Conservation
Since 1870*

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November 15, 2021

Liane M. Randolph, Chair
Members
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Sent via the CARB public comment portal

Re: Proposed amendments to commercial harbor craft regulation (chc2021)

Dear Chair Randolph and members of the board,

The California Fish and Game Commission is a constitutional body with a wide range of responsibilities related to ensuring that California has abundant, healthy, and diverse fish and wildlife as well as a rich and sustainable outdoor heritage. Since gaining statehood, California's outdoor heritage has included recreational fishing and, in 1870, it was the first activity the Commission was given responsibility to manage. *I write to convey our concerns with how proposed regulation changes could negatively affect recreational fishing and the coastal economies that depend on it.*

Healthy fish and wildlife require a healthy environment, a shared goal between our organizations. The Commission fully supports the work of the California Air Resources Board in addressing climate change, the harmful effects of air pollution, and environmental justice. The Commission also recognizes the importance of regulations such as those being considered in the subject rulemaking to achieving a healthy environment. Specifically, the proposed regulations are intended to help California meet National Ambient Air Quality Standards set by the U.S. Environmental Protection Agency.

Your agency's efforts to meet air quality standards have focused in the past on the most egregious sources of emissions, where costs to implement regulation changes are outweighed by the long-term benefits. We are concerned that the subject regulations proposed by CARB place excessive burden on the commercial passenger fishing vessel (CPFV) fleet, a segment of vessels that may not contribute as greatly to reducing emissions as estimated nor in a cost-effective manner, but whose regulation as proposed would likely reduce equitable access to the marine environment and cause economic harm to coastal fishing communities.

The proposed amendments to the commercial harbor craft (CHC) regulation would (1) for the first time separate CPFV from commercial fishing vessels (previously combined in a single category with the same requirements), and (2) expand more stringent emission reduction requirements to CPFV engines than to commercial fishing vessel engines. Both CPFV and commercial fishing vessels must be licensed by the California Department of Fish and Wildlife, use similar sizes and types of boats, spend most of their operating time far away from population centers, and are often used interchangeably, depending on the season, making it unclear how the proposed regulation would apply when a vessel is used for both purposes. These vessels are unlike any other category of vessel that will be affected by the proposed amendments, and it seems inappropriate to divide them into separate categories.

CARB staff have also made a number of assumptions about the CPFV fleet and existing emissions that appear problematic:

- (1) Optimistic vessel replacement costs that are not supported by recent price quotes, even for smaller vessels;
- (2) the ability to sell existing vessels out of state to recoup some capital when attempted sales of these vessels have not been successful to date;
- (3) an elastic demand that can absorb additional costs through increased ticket prices when, based on industry experience, small price changes have led to significantly reduced ticket sales, pointing to a highly inelastic demand;
- (4) that CPFVs can pass along the increased costs to customers but commercial vessels cannot, without data to show that commercial fishing vessels cannot otherwise absorb the costs;
- (5) the availability of financing for new vessel construction when such financing is difficult to obtain just for 60% of value for an existing vessel, much less 80% or more of the value for a new vessel;
- (6) using the Automatic Identification System for calculating what portion of CPFV activity occurs within 24 nautical miles of the California coast when the majority of the fleet is not required to use the system and spends most of its time outside those bounds;
- (7) using a baseline number of inspected CPFVs that appears to overestimate the actual number compared to uninspected "six-pack" charter boats, which have a very different fuel burn rate;
- (8) using acknowledged faulty data on the estimated time spent in regulated waters with a four- to five-fold error range and, hence, potentially far less air quality and health benefits than estimated;
- (9) that CPFV vessels are used solely for passengers when many are used in the off season for commercial fishing, and providing no indication of how such vessels will be regulated under the proposed amendments;
- (10) potential underestimation of the number of associated jobs and businesses that will fail with a reduction in the CPFV fleet; and
- (11) that there will be no loss in license sales revenues to the California Department of Fish and Wildlife when the staff analysis makes clear that some vessels will be removed from service, even if temporarily.

Also of concern is that CARB's staff has acknowledged, for CPFVs, the proposed emission reduction requirements are currently impossible to meet for one of several reasons: The technology is not yet available on the open market, is infeasible to install and also conform to U.S. Coast Guard vessel safety requirements, or is unsafe to install in wood and fiberglass hulls due to the operating temperatures at which they run. As a result, most CPFVs will necessarily have to be replaced, even after several years of compliance extensions. For a variety of reasons, it has been economically infeasible to build new CPFV vessels for decades. For example, most vessels in the southern California fleet were built in the 1970s and 1980s and it is estimated that more than 80% are constructed with wood or fiberglass. Without adequate grant funding to support vessel replacement, many CPFV businesses will shutter.

While the initial statement of reasons for the regulation changes indicates that "the macroeconomic impacts of the regulation are relatively small in relation to the California economy," which is true, the negative economic impacts will be concentrated in coastal fishing communities. CPFVs are a critical part of coastal fishing communities and are typically small businesses. CARB's staff estimates the average cost for a CPFV to comply with the proposed regulation changes—assuming the appropriate technology will be developed—at over \$500,000, a significant burden for a small business that cannot simply be transferred to its customers. As written, the proposed regulation changes will certainly result in the loss of CPFV vessels from the fleet and, thus, reduce an affordable method of accessing marine recreation. In addition, CPFVs often provide educational and fishing access that is otherwise unavailable to many, such as for school groups, disadvantaged youth, veterans, and families that cannot afford their own boats.

The California State Legislature has directed that implementation programs to reduce airborne toxins should be practicable (Health and Safety Code, subdivision (k) of section 39650). CARB's work to improve air quality, protect public health, and address climate change is vitally important, and can continue without imposing impracticable burdens on the CPFV fleet. Electrification of all types of engines is rapidly evolving, and it is easy to imagine a future in the coming years where zero-emission vessels are the norm. As currently written, the draft rule changes appear to be less forward-thinking than possible, which will leave those vessel owners that can afford it, incurring greater costs than necessary by retrofitting in-use diesel engines or purchasing new vessels with Tier 3 or Tier 4 engines and then having to convert to zero-emission and advanced technologies just a few years later. Rather than prolonging the use of diesel engines, perhaps CARB could consider incentivizing a faster transition to zero-emissions harbor craft, especially those vessels that spend the majority of their operating time closer to shore.

The Commission urges CARB to direct its staff to modify the proposed regulation changes to maintain CPFVs and commercial fishing vessels in the same vessel category and to work with the sport fishing and commercial fishing industries to develop regulations that are economically feasible—with adequate funding assistance—to incentivize continuing to lower engine emissions and prepare the fleets for ultimate conversion to zero emission technologies. We also encourage CARB to direct its staff to consult with the California Department of Fish and Wildlife, the California Coastal Commission, port/harbor/marina groups, and boat construction firms to better understand maritime and fishing practices in California's CPFV and commercial fishing fleets to help ensure the most effective and practicable regulation amendments.

If you or your staff have any questions about the Commission's comments, please contact Melissa Miller-Henson, the Commission's executive director, by email at fgc@fgc.ca.gov or by phone at 916-653-4899.

Sincerely,

 for

Peter Silva
President

cc: Charlton Bonham, Director, California Department of Fish and Wildlife
Craig Shuman, Regional Manager, Marine Region, California Department of Fish and Wildlife
Andrea Lueker, President, California Association of Harbor Masters & Port Captains
Brad Gross, Executive Director, California Association of Harbor Masters & Port Captains
Bill Shedd, Chairman, Coastal Conservation Association of California
Wayne Kotow, Executive Director, Coastal Conservation Association of California
Rick Powers, President, Golden Gate Fishermen's Association
John McManus, President, Golden Gate Salmon Association
James Stone, President, Nor-Cal Guides and Sportsmen's Association
Ken Franke, President, Sportfishing Association of California