



National Association of Charterboat Operators

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November 20, 2007

The Honorable Madeleine Z. Bordallo, Chair
Subcommittee on Fisheries, Wildlife & Oceans
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Henry E. Brown, Jr., Ranking Member
Subcommittee on Fisheries, Wildlife & Oceans
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Re: H.R. 1187, the "Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act,"

Dear Chairwoman Bordallo and Ranking Member Brown,

The National Association of Charterboat Operators (NACO) a national association of over 3,300 charter boat owner and operators across the United States; with a good portion of that membership operating in California waters, respectfully requests to offer its views on this legislation and its concerns over the implications for recreational boaters and the recreational boating industry in California. NACO is concerned that, even though it is clearly not the intent of the bill, some of the requirements in the legislation will inadvertently prohibit recreational boating in the sanctuaries.

Overall, the boating industry and recreational boating contribute more than \$16.5 billion and 300,000 jobs to California's economy each year. The health of America's marine resources is of vital importance to NACO, its members, and industry supporters. NACO fully supports the proper management of living marine resources through the National Marine Sanctuaries Program as long as reasonable access for boaters and anglers is maintained.

NACO, however, has serious concerns over the regulations prescribed in Sec. 6(c) of H.R. 1187, particularly as they are coupled with a significant expansion of the sanctuary boundaries (and therefore the application of such regulations).

These include:

· **Strict Liability Provision for Introduced Species.**

NACO acknowledges that recreational boats can unintentionally serve as secondary pathways for non-indigenous aquatic species, and while well-intentioned H.R. 1187's total prohibition (Sec. 6(c)(1)(C)) of the introduction of such species is excessive and unreasonable. NACO respectfully urges the Committee to abandon this strict liability language for discharges of introduced species by targeting only willful and knowing introductions of non-native species.

· **Prohibition of Certain Incidental Discharges.**

Recreational boats have many incidental, nonpolluting water-based discharges that are essential to their operation, including but not limited to bilge water from a properly functioning marine engine and engine cooling water. H.R. 1187's silence on these discharges coupled with its total ban (with the exception of certain biodegradable effluents and engine exhaust) on all discharges would effectively prohibit

recreational boating in the sanctuaries, which is clearly not the intent of the legislation. NACO strongly recommends significant revisions to the legislation to make allowances for incidental discharges as have historically been defined under the Clean Water Act

· **Limitations of Applicability to Biodegradable Effluents.**

While NACO supports efforts to expand the voluntary use by boaters of biodegradable boating products, the strict restriction to only biodegradable agents as required in H.R. 1187 would provide minimal environmental gain, be difficult to monitor and enforce, and would place boaters at risk of significant criminal and civil penalties.

· **Prohibition of Discharges of Gray Water from Recreational Boats.**

Gray water discharges from recreational craft are not currently regulated in U.S. waters under federal law, and H.R. 1187's silence on gray water discharges from recreational boating vessels indicates a prohibition. In a 2003 proposed rulemaking for waters within its jurisdiction, the U.S. National Park Service enumerated the challenges of gray water discharges from recreational boats, including: (1) that recreational vessels are generally not equipped with holding tanks for gray water, so regulations would be infeasible; and (2) the U.S. Coast Guard neither requires nor certifies holding tanks for gray water under current law. As a general matter, there is no scientific assessment of the impact of gray water discharges from recreational boats. A ban on recreational vessel gray water discharges in these sanctuaries would unfairly penalize the behavior of boaters who may be uninformed about the availability of biodegradable soaps and cleaning agents or who may be unaware that such regulations have been put in place in the sanctuary boundaries.

· **NPDES Exception.** Sec. 6(E)(iii) exempts from prohibition discharges currently permitted by the National Pollution Discharge Elimination System (NPDES) and new NPDES permits which do "not increase pollution in the Sanctuaries." Because, by definition, NPDES permits essentially make lawful the discharge of pollutants otherwise prohibited under the Clean Water Act, this language appears to be inconsistent with the NPDES permitting scheme. Furthermore, because the Northern District Court of California has recently vacated a long-standing exemption of incidental discharges associated with the normal operation of a vessel in *Northwest Environmental Advocates, et al vs. Environmental Protection Agency*, there is considerable legal uncertainty surrounding the applicability of NPDES to recreational boat operation.

NACO, strongly urges the Committee to substantially revise H.R. 1187 in order to reflect the statutory requirement under the National Marine Sanctuaries Act under Sec. 301(b)(6) to strive toward a management approach which *balances* resource protection with the rights of boaters and anglers to enjoy the sanctuary resources. NACO is concerned that, although a reasonable expectation of access is required under the law, H.R. 1187 as drafted would unintentionally prohibit the operation of recreational boats within the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries.

NACO greatly appreciates your consideration of its views.

Sincerely,

Bobbi M. Walker

Bobbi M. Walker
Executive Director

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