

October 23, 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
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Dear Chairwoman Bordallo and Ranking Member Brown,

In anticipation of your Committee's upcoming hearing on H.R. 1187, the "Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act," the National Marine Manufacturers Association (NMMA) respectfully offers its views on this legislation and its implications for recreational boaters and the recreational boating industry in California. NMMA is concerned that some of the requirements in the legislation will inadvertently prohibit recreational boating in the sanctuaries, even as this is clearly not the intent of the bill.

NMMA is the nation's leading recreational marine industry association, representing nearly 1,700 boat builders, engine manufacturers, and marine accessory manufacturers who collectively produce more than 80 percent of all recreational marine products made in the U.S. With almost 73 million boaters nationwide, the recreational boating industry is a major consumer goods industry with expenditures on recreational marine products and services of nearly \$40 billion in 2006 alone. Spending by recreational boaters is responsible for 855,000 U.S. jobs nationwide.

In California, the economic impacts of recreational boating industry are substantial. In 2006, according to the U.S. Coast Guard, California ranked second in the nation with 893,828 registered recreational boats. California is fourth in the nation in number of boat builders and second nationally for number of boat building employees, with 83 active boat manufacturers and 85 manufacturing facilities that contribute 7,985 directly-related manufacturing jobs to the state economy. For retail sales in the new powerboat, motor, trailer and marine accessories market, Californians spent more than \$1.2 billion in 2006 alone. 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 NMMA members and NMMA supports the proper management of living marine resources through the National Marine Sanctuaries Program insofar as reasonable access for boaters and anglers is maintained. NMMA, however, has serious concerns over the regulations prescribed in Sec. 6(c) of H.R. 1187, particularly as they are coupled with a

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significant expansion of the sanctuary boundaries (and therefore the application of such regulations). These include:

- **Strict Liability Provision for Introduced Species.** NMMA acknowledges that recreational boats can serve, unintentionally, as secondary pathways for aquatic nuisance species, but H.R. 1187's total prohibition (Sec. 6(c)(1)(C)) of the introduction of such species, while well-intentioned, is excessive and unreasonable. NMMA 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.** Pleasure craft have many incidental, non-polluting 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. NMMA strongly recommends significant revisions to the legislation to make allowances for incidental discharges as have historically been defined under the Clean Water Act (but which have recently been challenged in litigation).
- **Limitations of Applicability to Biodegradable Effluents.** Certainly, NMMA supports efforts to expand the voluntary use by boaters of biodegradable boating products. However, the strict restriction to biodegradable agents as required in H.R. 1187 would be difficult to monitor and enforce and provide minimal environmental gain while placing 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 pleasure craft 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, which are in our judgment insignificant relative to cruise ship and other large commercial vessel discharges. 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.

Due to these concerns, and others, NMMA 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. NMMA 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.

NMMA greatly appreciates your consideration of its views. Please contact Mathew Dunn (mdunn@nmma.org; (202)737-9760) of my staff with any questions or concerns, or if we can be of additional assistance.

Sincerely,



Scott B. Gudes
Vice President, Government Relations

Cc: The Honorable Lynn Woolsey
The Honorable Wayne Gilchrest