

THE CALIFORNIA ASSOCIATION OF

HARBOR MASTERS AND PORT CAPTAINS

INCORPORATED

July 31, 2020

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State Water Resources Control Board
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Los Angeles Regional Water Quality Control Board
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Re: Comment Letter – 2020-2025 Nonpoint Source Program Implementation Plan

Dear Sirs,

The California Association of Harbor Masters & Port Captains (CAHM&PC) is a non-profit association that was established in 1948 for the purpose of exchanging information relative to construction, maintenance, operation, regulation, enforcement, administration and management, pertaining to boats, marinas, harbors and ports. Our membership includes marinas, ports and harbors from San Diego to Crescent City along with industry professionals from across the country.

The CAHM&PC is pleased to participate as a stakeholder in the regulatory process and appreciates the opportunity to comment on the California 2020-2025 Nonpoint Source Implementation Plan (NPS Plan). In this document, the Los Angeles Regional Water Quality Control Board (Regional Board) named “reduc[ing] NPS discharges of biocides from boats residing in saltwater marinas in Los Angeles and Ventura Counties” as one of its priorities. As stated in the NPS Plan, the Regional Board plans to issue an investigative order and to develop a conditional waiver of waste discharge requirements (WDRs) for the discharge of biocides from boats.

The CAHM&PC, working with our colleagues at Marine Recreation Association has collectively assembled the following comments to the State Water Resources Control Board (State Board) and Regional Board in regard to named goals in the NPS Plan related to the discharger of biocides from boats residing in marinas. CAHM&PC has the following concerns:

- Based on our observations of copper AFP control efforts being applied in Marina del Rey, Newport Bay and Shelter Island, our members are surprised and very concerned to see the Regional Board planning for new enforcement actions (i.e., orders and permits) related to controlling biocidal AFPs before the results of present efforts have had time to take effect.

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- Significant effort has been applied in each of these areas, yet no feasible or reasonable solution has resulted. Fellow regulatory agencies have conducted numerous scientific investigations, and all concur that suitable non-biocidal alternative paints are not available on the market.

The availability of non-biocidal paints that are suitable for recreational boaters is a major concern. Local agencies, cities, marina owners, and marina operators cannot control the distribution and use of a pesticide nor can they resolve the conflict between state agency's jurisdictions. This same conflict is ongoing in the State of Washington, and the state has agreed to halt copper AFP controls because there is no feasible, reasonable, and readily-available paint alternative to boaters.

- We are also concerned that the application of controls, expected to be enforced by our members, will significantly impact the viability of marina businesses and hurt the recreational boating industry. Expecting CAHM&PC members to have the resources and means to develop a solution for copper AFP that both LA County and the Port of San Diego have not been able to accomplish after more than 10 years of effort is unreasonable. The solution to reducing the discharge of biocides from boats needs to be developed jointly by the State Board, Regional Boards, and the Department of Pesticide Regulation (DPR).

The CAHM&PC would like to see the State Board, Regional Board and DPR staff continue to work together to solve the conflict of regulating a legal pesticide as was developed in the 2003 memorandum of agreement (MOA). In this effort, our members would benefit from:

- Clarity on the jurisdictional authority of a marina owner or operator to prohibit or in any way attempt to regulate the use of a legally-available antifouling paint (i.e., pesticides);
- Allowing time for recent copper controls on AFP leach rates and brake pads to be fully implemented prior to additional enforcement actions;
- Allowing time for DPR to evaluate the effectiveness (through their monitoring study) of the new copper leach rate formulation limits;
- Your review and consideration of the recent actions by the State of Washington to delay the halting of copper-based AFP because no "feasible, reasonable, and readily-available" alternatives to copper-based AFP exist;
- Your review and consideration of the attached summary of the extensive effort by USEPA, CalEPA, and the Washington Department of Ecology to identify suitable, safe, non-biocidal alternatives to copper AFP;
- Identification of suitable alternative paints for recreational vessels that are effective and safe for the environment, prior to implementation plans and permits that limit the use of copper-AFP;
- Consideration of revising the methods in which water quality impairments are determined. The sediment quality standards have evolved to use multiple lines of evidence to determine impairment, where the exceedance of a criteria is evaluated with the presence of toxicity and a biological endpoint. Currently, the need for an investigative order and a permit is solely driven by the exceedance of a numeric standard that was designed to be overly conservative.

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For an entire industry to be impacted, surely more than the exceedance of a California Toxics Rule (CTR) value should be considered.

- Clarity on the Regional Board's intent to "regulate these marinas [Los Angeles and Ventura Counties, including Alamitos Bay, Channel Island Harbor, King Harbor, Los Angeles and Long Beach Harbors, and Ventura Harbor-Ventura Keys] in the same manner as the Marina del Rey Harbor to maintain the consistency in the compliance requirements". Please clarify what compliance requirements "these marinas" should anticipate. Will there be an opportunity to examine the effectiveness of those compliance requirements prior to enforcement by the Regional Board?
- Consideration of the significant costs that Los Angeles County and the Port of San Diego have incurred related to meeting copper water quality standards, and the impact of those costs on the small business owner and the marine recreation industry as a whole; and,
- Consideration of the technical and financial resources that stakeholders, including individual boat owners, will need to respond to an investigative order. There are no functional organizations in place that can lead the type of collaborative effort required.

The CAHM&PC is committed to clean water initiatives. We live, love and work in coastal areas and value clean water.

- CAHM&PC members are prepared to support the use of legal paints and to encourage boaters to use the recommended management actions to reduce copper leach rates, such as reduced cleaning frequency and the use of soft pile carpet for in-water hull cleaning. However, CAHM&PC members are not prepared to enforce these activities.
- We would appreciate the opportunity to have a representative of the CAHM&PC attend coordination meetings for data needs and/or updated policy considerations.
- The CAHM&PC organization is prepared to establish a broader, industry-wide AFP working group (AMI-NMMA) and provide specialty focus area at our annual Training Conference.
- The CAHM&PC is willing to work with the Clean Marine program to add AFP best practices to the criteria for certification as a clean marina.

The CAHM&PC believes the Regional Board should not issue an investigative order and should not develop conditional WDRs for the discharge of biocides from boats residing in marinas until the boating community has a feasible, reasonable and readily-available alternative non-biocidal AFP. We very much appreciate your time and consideration.

Respectfully,

Brad Gross, Executive Director

Enclosure: Review of Non-copper-based Alternative Antifouling Paints to Support Discussion on Implementation Strategies for Reducing Copper by Boat-Paint Conversions by Moffatt & Nichol