**Gaming the Proposed CHC regulation definition of Short-Run Ferry**

Overview:

The proposed CHC regulations are visionary as they are the first regulations by any US regulatory agency to require ZEAT (Zero-Emission Advanced Technology) in marine vessels. This is a pioneering step forward in addressing climate change in the marine sector.

It also is the first attempt by the California Air Resources Board (CARB) to bifurcate regulations based on distance traveled as it applies ZEAT requirements to ferries that operate less than three nautical miles and not those who travel more than three nautical miles. In defining this bifurcation, CARB has unintentionally created regulations that will cause longer-run diesel routes, more diesel fuel consumption and more climate change as well as unfair competition for those abiding by the rules. This is because operators have figured out a few simple and pollution increasing ways to game and thus avoid the short-run ZEAT requirements. In order for ZEAT regulation to be effective, these two unintended consequences need to be fixed so that the ZEAT regulations create a level playing field and reduced GHG (greenhouse gas) emissions. This can easily be done by changing the proposed CHC definition of a short-run ferry before the proposed CHC regulations are adopted.

Language:

The language from the proposed CHC regulations are the definition of Short-Run ferry and the regulations that pertain to short-run ferries – both of which are copied below from the latest proposed CHC draft regulations. The bolded and italicized language creates loopholes that essentially any vessel operator could use in the Bay Area to avoid operating a ZEAT vessel on short-run routes.

“Short-Run Ferry” means a vessel dedicated to provide regularly scheduled round-trip ferry service between two points that are less than 3 nautical miles apart. ***Vessels that make multiple stops in a single round-trip, where half or more of the single trip lengths are less than 3 nautical miles, and the longest single trip length is less than 6 nautical miles, are considered short-run ferries. Vessels that provide ferry round-trip service between two points that are less than 3 nautical miles apart, but account for less than 20 percent of the service trips from one fleet or operator between those two points during a given calendar year, are not considered short-run ferries.***

Section 10: Requirements for Zero-Emission and Advanced Technologies (ZEAT) for New, Newly Acquired and In-Use Short-Run Ferries, and New and Newly Acquired Excursion Vessels (Applicable On and After January 1, 2023).

1. Any person who sells, purchases, offers for sale, leases, rents, imports, or otherwise acquires the following that operates or is intended to operate in Regulated California Waters must comply with the applicable ZEAT requirements shown in Table 14 for new excursion vessels, newly acquired excursion vessels, new short-run ferries, newly acquired short-run ferries, or in-use short-run ferries operated above the annual hour limits for low-use exceptions as set forth in subsection (e)(14).

**Table 14: Compliance Dates for Zero-Emission and Advanced Technologies**

|  |  |  |
| --- | --- | --- |
| Zero-Emission | New, Newly Acquired and In-Use Short-Run Ferries | December 31, 2025 |

Impact:

This short-run ferry definition would result in two negative consequences:

1. More diesel fuel is burned as a result of how these regulations are written rather than less. One operator has informed its board that to serve a short-run route covered by these regulations, it will burn 187,000 more gallons of diesel fuel a year by adding legged routes to avoid the short-run ferry definition. From that one operator alone, 2094 tons of CO2 emissions per year will be increased in the Bay Area in anticipation of avoiding the short-run ferry definition not to mention the increase in NOx and other pollutants.
   1. For example, the distance between Tiburon and Angel Island State Park is 1.1 nautical miles thereby making it a route subject to the short-run ferry definition. However, if a vessel goes from San Francisco to Tiburon (7 miles) and then Tiburon to Angel Island State Park (1.1 miles), then from Angel Island State Park to Tiburon (1.1 miles, Tiburon to San Francisco (7 miles), a route that has been set up by a ferry operator specifically to avoid the short-run ferry definition as written in two ways:
      1. One or more legs are greater than 6 nautical miles
      2. Less than half the legs are less than 3 nautical miles – this one is met because one of the five scheduled services a day stops in Sausalito intentionally to avoid the short-run ferry definition in advance of the proposed regulations being adopted thereby making it 52.3% of the each weekday’s routes being greater than 3 nautical miles and 51.7% of routes for the entire week as on the weekend there are no stops in Sausalito and this makes this legging strategy mean this ferry service does not have “half or more of the single trip lengths are less than 3 nautical miles”:
         1. <https://www.goldengate.org/assets/1/6/angel_island_ferry_schedule4.pdf>
2. Diesel boats that do not have to pay for the cost of electric conversions will underprice and put out of business electric vessels. In our opinion, if all vessels are required to be electric and one outcompetes the other, that is business and fair’s fair. But what is not appropriate is in gaming and thus avoiding the ZEAT regulations, one operator is able to remain diesel and underprice an operator that converts to electric who builds the conversion cost not covered by Moyer and other funding into ticket prices.

The net impact of these two concerns is that as written, the proposed CHC regulations have the potential to significantly increase pollution in the Bay Area rather than reduce it, incent vessel operators to game the regulations rather than follow them, and put operators that do follow the proposed CHC regulations and invest in ZEAT technology at risk of being outcompeted by those gaming the regulations.

Key: Struck through language below should be removed from the short-run ferry definition and bolded language should be added

Solution:

“Short-Run Ferry” means a vessel dedicated to provide regularly scheduled round-trip ferry service between two points that are less than 3 nautical miles apart. Vessels that make multiple stops in a single round-trip, where ***33%*** *~~half~~*or more of the single trip lengths are less than 3 nautical miles, and the **average** ~~single~~ trip length is less than **5** ~~6~~ nautical miles, **must submit an application to the local AQMD that is approved in order to not be** ~~are~~ considered short-run ferries. Vessels that provide ferry round-trip service between two points that are less than 3 nautical miles apart, but account for less than 20 percent of the service trips from one fleet or operator between those two points during a given calendar year, **must submit an application to the local AQMD that is approved in order to not be** ~~are not~~ considered short-run ferries.

Rationale:

With the wording additions and subtractions above, three things are achieved.

1. An operator would have to leg an unfeasible number of longer trips to game the regulations
2. An operator could not add one long leg to game the regulations due to changing it from single trip to average. To make this change from single to average neutral in difficulty of implementation, there is a suggested reduction in distance from 6 to 5 nautical mile
3. Rather than any exemption to the short-run ferry definition being automatic or up to the interpretation of the vessel operator, the local AQMD has to approve the exemption. Without this change, it is not specified as to how an exemption is determined. Giving the local AQMD the ability to grant an exemption if there is a logical reason for it or to prevent an exemption from being granted if the AQMD believes the effort is designed to circumvent the regulations and/or alternatives exist that make the requested exemption unnecessary helps ensure the regulations are properly interpreted. Our hope is that the AQMD would receive with each application an evaluation of the amount of diesel fuel burned to run the proposed routes as an exemption to the short-run ferry ZEAT requirements and that the AQMD would evaluate service need vs emissions using this information. Also, if an applicant has to get the exemption from the AQMD, it gives the AQMD the opportunity to talk with the applicant about funding for a ZEAT conversion and reduced emissions instead of seeking an exemption to run longer routes.