



**GLOBAL
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July 15, 2022

TO:

Joshua Grice
Rulemaking Lead
Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Grice,

RE: Fishing and coastal community stakeholder comments on proposed rule Chapter 173-446 WAC

Dear Mr. Grice,

We write to provide comment on specific parts of Ecology's proposed rule, WAC 173-446, establishing cap-and-invest program elements of the state's obligations under the Climate Commitment Act (CCA) pertaining to the combustion of watercraft fuels. Our organizations are involved in supporting treaty tribal and non-treaty tribal commercial fishing communities and vessel operators to maintain sustainable marine resources and prosperous marine resource economies in Washington. We strongly support the goals and objectives of the CCA, including the intention both to achieve deep emission reductions and to do so in ways that can work for vulnerable communities and people who carry high transportation energy burdens. We believe that Ecology's important CCA implementation work could bring significant direct benefits to the state's coastal communities via investments in emissions reductions technologies and marine vessel fuel efficiency. Thank you for the opportunity to provide these comments.

In this comment we will advance two suggestions for revising the proposed rule. These are intended to simplify administration and support efficient and timely operation of the Act to achieve its climate goals, largely by reducing unnecessary points of friction.

Ecology's proposed rule deals with emissions from the state's commercial fishing vessels directly in one instance, at 173-446-040(2)(b)(ii), by providing an exemption from covered

emissions if watercraft fuels are combusted outside Washington waters. Virtually all Washington based commercial fishing vessels use no. 2 diesel fuel or gasoline for propulsion. Under the proposed rule, for fuel suppliers to qualify for the watercraft fuel exemption for no. 2 diesel and gasoline, they must “demonstrate to ecology’s satisfaction both that the fuels are used in watercraft and that they are combusted outside of waters under the jurisdiction of Washington”.

We suggest that this element of the proposed rule be revised to provide clarity to fuel suppliers and their customers regarding reporting requirements to demonstrate qualification for the watercraft fuels exemption and to reduce administrative recordkeeping burdens. The reasons for this are threefold: 1) some classes of Washington based commercial fishing vessels operate within state waters, whereas many others do not; 2) it is not reasonable (or likely to work) to require commercial fishing vessel customers to log the locations of their transit and fishing activities and to provide this information to their fuel suppliers; and 3) to minimize confusion and administrative burden, commercial fishing vessel operators and their fuel suppliers should only encounter a uniform reporting method in order to demonstrate a qualification for the watercraft fuels exemption.

We believe that the solution to this issue can be found within existing state regulations. Washington already provides for a sales tax exemption for diesel fuel sold in Washington if that fuel is used “in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in the business of commercial deep sea fishing or commercial passenger fishing boat operations outside the territorial waters of this state” (RCW 82.08.0298). In providing this exemption, the Legislature has sought to delineate between fishing activity occurring within and without waters under the jurisdiction of Washington in a materially similar manner to the way it delineated emissions from watercraft fuels in the CCA at §10(7)(b).

The Department of Revenue issued a rule at WAC 458-20-176 clarifying the types of watercraft that qualify for the legislature’s sales tax exemption for diesel fuel purchases. The rule defines the term ‘commercial deep sea fishing’ as “...fishing done for profit outside the territorial waters of the state of Washington” and excludes certain commercial fishing activities that are only conducted within state waters. The rule provides a diesel fuel tax exemption for commercial deep sea fishing vessels and commercial passenger fishing vessels operating offshore: “If a person qualifies for the exemptions by virtue of operating a deep sea fishing vessel, and has the requisite amount of gross receipts from that activity, all diesel fuel purchases and uses by such person for such vessel are tax exempt. *It is not required that all the diesel fuel purchased be used outside the territorial waters of this state*” (emphasis ours). In order for the operator of a deep sea fishing vessel to certify their qualification for this diesel fuel tax exemption, they must complete Department of Revenue form 27-0032, the Buyer’s Retail Sales Tax Exemption Certificate, indicating their qualification as a deep sea fishing vessel operator at Section 4, line e, and including the name and registration number of their vessel. This form must be kept on file by the diesel fuel supplier for each customer who qualifies for the tax exemption.

We believe that watercraft fuel sold to the operator of a commercial deep sea fishing vessel operator who qualifies for the diesel fuel tax exemption should be considered by Ecology to be “used in watercraft and that they are combusted outside of waters under the jurisdiction of

Washington”. Watercraft fuel suppliers can account for fuel sales to qualifying operators by retaining copies of form 27-0032 for each qualifying customer and by logging fuel sales to these customers.

We suggest that Ecology revise the proposed rule to clearly state that watercraft fuels sold to operators of deep sea fishing vessels for use on those vessels that qualify under WAC 458-20-176 are exempt from costs imposed under the CCA on emissions from combustion of their fuel (this is our preferred approach). Alternatively, Ecology could issue guidance to watercraft fuel suppliers prior to the implementation of the final rule clarifying that fuel sales to operators of vessels that qualify for Revenue’s defined diesel fuel tax exemption and provide a completed form 27-0032 are also exempt from costs imposed by the CCA on emissions from combustion of that fuel .

We also note that it is not clear to us whether costs to watercraft fuel suppliers owned and operated by treaty tribes and those incurred by treaty tribal commercial fishing vessel operators resulting from the requirements of the proposed rule would constitute a tax under the tribal fuel tax agreement mandated by RCW 82.38.310 or whether accounting procedures resulting from the proposed rule would conflict with negotiated fuel tax agreements. We suggest that Ecology take two steps to clarify this matter. First, inquire about this and related tribal fuel tax issues with the Assistant Attorney General for Open Government; second, initiate consultation on these and related tax issues with affected tribes and the Governor’s Office of Indian Affairs.

In conclusion, we wish to observe that the Climate Commitment Act and this rulemaking are important tools for protecting healthy fisheries and waters from the multiple and serious impacts of climate change. Multiple lines of research and analysis (including the first recommendation of Washington’s Blue Ribbon Panel on Ocean Acidification) clearly show that deep emission reductions are needed to protect fisheries and marine ecosystems from impacts of unchecked emissions. For that reason, we wish to suggest two steps: 1) a strong effort by Ecology (in the rule itself and in other communications) to clarify to the public how provisions of this rule will prevent potentially painful, CCA-induced price spikes at the fuel pump; and 2) a minor adjustment in the rule itself to mitigate any genuine risk of a price spike in transportation fuels, especially for working vehicles and vessels. Our intent in suggesting the minor revision described below is to facilitate smooth and effective implementation of the Act by reducing risk of a backlash triggered by painful but unnecessary price spikes at the fuel pump.

For context, we note that nothing in the statute or the proposed rule requires fuel suppliers to invest proceeds from any free allowances they may receive as EITEs to mitigate price effects at the fuel pump. That creates a risk of unintended price impacts to communities and individuals the statute itself sought to protect from such impacts. In fact, the statutory language for investments in fuel efficiency was deliberately written broadly (at Sec 29(1)(j)(i) to leave open the important cost-control strategy of investing CCA revenues to increase fuel efficiency in working vehicles and vessels, notably for “people with lower incomes” and “rural communities that carry a higher transportation fuel burden.”

Washington fishing tribes and other fishery-dependent rural communities already face some of the highest transportation fuel burdens in the state.

The CCA at Sec 29, Subsection 1(j)(i) explicitly authorizes investments that could greatly mitigate unintended price impacts on these vulnerable and protected communities, specifically by allowing investments for “Programs, activities, or projects that directly improve energy affordability and reduce the energy burden of people with lower incomes, *as well as the higher transportation fuel burden of rural residents, such as bill assistance, energy efficiency, or weatherization assistance.*”

We believe that swift, early provision of fuel-efficiency investments for working vehicles and vessels is a critical requirement to mitigate potential price impacts on the communities and people identified by the statute.

Focusing fuel efficiency investments on working vehicles and vessels (which operate on tight schedules and lack incentives to stray further when efficiency improvements reduce net fuel expenditures) can avoid the vitiating effects of the “rebound” effect, which diminishes potential emission-reductions that can be reliably delivered by increasing fuel efficiency in passenger vehicles.

Multiple scenarios shown in the Vivid Economics report for Ecology (July 2022) indicate significantly higher early allowance costs than anticipated during the development of the price and invest policy that evolved into the CCA. Should these costs be passed down to the consumers at the fuel pump, significant consequences could result rural, food-producing communities and people who carry high transportation energy burdens, likely resulting in unintended reactions and political backlash that could delay or disrupt the timely implementation of this law.

This risk is elevated by the proposed rule’s omission of any mechanism to implement Sec 29(1)(j)(i). We believe this omission could open a significant risk to the law’s efficacy and timely implementation. That was why the legislature included a provision to mitigate potential cost impacts on these vulnerable communities and people. To honor legislative intent, we recommend that Ecology take the following steps:

First: Amend the “Purpose” section at WAC 173-446-010 to affirm that this program also will mitigate price impacts on vulnerable communities and people identified by the legislature, as shown in **bold** below:

Purpose. The purpose of this chapter is to implement the provisions of the GHG emissions cap and invest program created by RCW 70A.65.060 through 70A.65.210. This program establishes a declining cap on GHG emissions from covered entities consistent with the limits established in RCW 70A.45.020, and a program to track, verify, and enforce compliance with the cap through the use of compliance instruments, **and to mitigate unintended impacts of carbon pricing on**

vulnerable communities, people, and enterprises identified by the legislature.

Second: Issue a public statement from the Director acknowledging that no mechanism is offered in this proposed rule to implement Sec 29, Subsection 1(j)(i) of the CCA, and formally committing the Department to swiftly develop measures to do so, including:

1 by issuing an emergency supplemental rule specifically and exclusively to establish a pilot program providing a mechanism that the legislature can, at its discretion, employ to rapidly channel funds for immediate implementation of this subsection in order to mitigate unintended impacts of the cap and trade system on communities and people the legislature intended to protect from such impacts. This pilot program should include provisions that:

- i) Field-test methods to provide a simple process for potential program users to apply for funding to increase fuel efficiency in working vehicles, as follows:
- ii) Definitions: “working vehicles and vessels” means vehicles and vessels that:
 - (iia) are used in conduct of food production, commercial transport, or other professions and trades during at least 75% of engine hours (vessels) or 75% of miles traveled (vehicles), or are used for commuting to and from work or job sites for at least the same proportion of engine hours (vessels) or miles traveled (vehicles).
- iii) Recordkeeping and data requirements. Emission reductions from improved efficiency in qualifying vehicles and vessels will be verified by providing daily travel logs, fuel receipts, and a quarterly tally of fuel purchases and miles traveled in commercial use, as described below.
- iv) (a)(ii) Verification Using Standard Emissions/Gallon Data To calculate total emissions both before and after efficiency improvements, standard EPA estimates of emissions per gallon of applicable fuel will be multiplied by gallons purchased and the applicable percentage of commercial use for the vehicle. Formula: ((emissions/gallon) X (number of gallons)) X percent commercial use of vehicle.
- v) (a)(iii) Baseline. To estimate fuel efficiency prior to efficiency improvements, any of the following data will constitute a sufficient record:
- vi) (a)(iii)(A) For unmodified commercial road vehicles of standard manufacture, the EPA-listed MPG at the time of manufacture.
- vii) (a)(iii)(B) For modified or non-standard working vehicles and other cases for which EPA mileage estimates are not applicable, and for all working vessels, verification of emission reductions via improved efficiency requires a complete daily log of distance traveled and fuel purchased for work, all fuel purchase receipts, covering a period of not less than 30 working days immediately prior to the efficiency improvement (6 weeks of records where a five-day work week is applicable, or 30 consecutive days in the case of vehicles or vessels in continuous duty).

- viii) (a)(iv) Verification of effectiveness. To document fuel efficiency (and resulting emission reductions) after efficiency improvements, the following data will constitute a sufficient record, to be computed by Ecology using EPA published emissions/gallon data by fuel type: a complete daily log of distance traveled for work and fuel type and amount purchased,; all fuel purchase receipts for each quarter (1/4 year) in which credits are sought for efficiency improvements, starting immediately after installation or adoption of efficiency improvement methods (6 weeks of records where a five-day work week is applicable, or 30 consecutive days in the case of vehicles or vessels in continuous duty).
- ix) (a)(v) Verification by results, not technology. To ensure that verification under this simplified protocol is technology neutral, Ecology is required to rely on output-based measures as described above to determine the quantity of emissions reduced.
- 2) **By providing a rationale for this emergency rulemaking based, at a minimum, on the following case:** The current proposed rule omits implementing language for CCA’s provision to authorize investments in fuel efficiency, especially for rural communities and people who carry high transportation energy burdens. This omission inadvertently may cause unintended economic and policy consequences for communities the legislature intended to protect from such impacts, as demonstrated by the language of this subsection of the CCA.
- 3) **by working with other Departments, including Commerce, Agriculture, Fisheries, and Economic Development, to identify and commit unexpended discretionary funds to administer and fund fuel-efficiency investments authorized by this subsection as quickly as possible, upon implementation of the cap and trade mechanisms of the CCA. While electrification of transportation is a desirable goal, the practical limitations of this option in during early years or decades of CCA implementation must be acknowledged. Current battery technology, existing and planned charging systems and available electric vehicle options—coupled with difficulties in securing investment capital—make switching to electric vehicles an unattainable aspiration for most owners of working vehicles and vessels. In many fishery dependent communities and other rural communities subject to high transportation energy burdens, multiple constraints apply to electrification of transport. Limits of charging infrastructure, battery technology, and capabilities of available electric vehicles and vessels are likely to remain a major limiting factor for many years on electric vessels and vehicles in many fishing ports, tribal communities, and communities where food production—whether fishing, aquaculture or terrestrial farming and ranching—is a vital source of livelihood, economic activity and cultural identity. Vessel owners in most commercial and charter fisheries and tribal fleets face a likely timeline of decades, not years, before they can expect to replace existing diesel engines with practical electric propulsion systems.**

We recommend that a minimum of \$5 million per biennium be allocated from existing funds to support fuel efficiency investments for working vehicles and vessels during initial implementation of the CCA, to be expanded to \$50 million per biennium via auctions under the CCA. Investments should include both efficiency retrofits and engine replacement grant programs for commercial fishing vessels and other working vessels and vehicles, including commercial vehicles, farm vehicles, vehicles used in other professions and trades.

Thank you for your consideration of these comments. If you have any questions about these or any related issues, please contact Brad Warren at brad@globaloceanhealth.org.

Sincerely,

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