



March 20th, 2024

The Honorable Scott Conklin
Chairman
House Commerce Committee
314 Irvis Office Building
Harrisburg, PA 17120-2077

The Honorable Joe Emrick
Republican chair
House Commerce Committee
108 Ryan Office Building
Harrisburg, PA 17120-2137

Re: Right to Repair – Oppose or Amend

Dear Chair Conklin and Members of the House Commerce Committee:

The Marine Retailers Association of the Americas (MRAA), and the National Marine Manufacturers Association (NMMA), would like to thank you for the opportunity to express to provide input on “Right to Repair” and ask that as the Committee moves forward, you consider language to exclude all offroad vehicles.

The Marine Retailers Association of the Americas (MRAA) is the leading trade association of North American small businesses that sell and service new and pre-owned recreational boats and operate marinas, boatyards, and accessory stores. MRAA represents more than 1,300 individual member retail locations and conducts advocacy efforts on their behalf, including XX members located in Pennsylvania.

NMMA is the trade association for the U.S. recreational boating industry, representing 1,300 marine businesses, including recreational boat, marine engine, and accessory manufacturers. The recreational boating industry has a \$230 billion impact on the nation’s economy, supporting over 800,000 American jobs across 35,000 U.S.-based marine businesses.

While we do not question the good intentions of “Right to Repair” initiatives, we know from experience that broadly tailored legislation will negatively affect the marine industry, and the consumers that enjoy and depend on our products. For example, right—to—repair legislation that grants consumers access to software, specialized tools, and emissions features that are incorporated into marine engine and marine electronic products, will result in modifications to engines that run afoul of federal emissions and safety requirements. Such legislation would also compromise technology that’s crucial for navigation and the safe operation of a vessel, like radar and GPS.

The Marine Industry does not oppose our consumers’ rights to make repairs to their equipment, and in fact many of our members work with their customers to provide the required parts and train them to do simple repairs on their watercrafts independently. We do, however, oppose initiatives that grant access to the proprietary code of the products our members sell due to concerns of safety, emissions, compliance, and product reliability. Not only is there a risk of putting consumers and the boating public in danger, but marine manufacturers are also required by U.S. Environmental Protection Agency (EPA), under 40 CFR 1068.50 to ensure “adjustable parameters”¹ are unable to be tampered with by unauthorized technicians, ensuring engines maintain their safety and emissions protocols.

However, the extent of that access is strictly limited by the EPA and the Clean Air Act. To comply with Clean Air Act and meet EPA mandates, recreational marine engine manufacturers cannot provide access to pollution control devices. In guidance issued on Nov. 23, 2020, by Susan Parker Bodine, EPA Assistant Administrator for Enforcement and Compliance Assurance, tampering with emission controls is a federal offense. Manufacturers are the gatekeepers. They must ensure that access to the software controlling an engine's emissions only be made available to those who can be expected to adhere with Clean Air Act mandates and to keep emission tolerances within federally required levels. Original Engine Manufacturers must limit access to these highly regulated sections of software to factory-trained and certified technicians, and even then, some access points are only available to representatives of the manufacturer. As Ms. Bodine states in the official guidance:

“Section 203(a)(3) of the [Clean Air] Act prohibits tampering with emissions controls and prohibits making and selling products with a principal effect of bypassing, defeating, or rendering inoperative emissions controls. The prohibitions in section 203(a)(3) apply to all vehicles, engines, and equipment subject to the certification requirements under section 206 of the Act, or other design requirements in the Act or regulations. This includes... nonroad vehicles (e.g., all-terrain vehicles, off-road motorcycles) and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or “tailpipe” emissions, evaporative emissions, and onboard diagnostic systems.”²

Right to Repair legislation and initiatives in Pennsylvania must account for federal anti-tampering requirements as well as emissions and safety standards.

Furthermore, equipment manufacturers and dealerships have invested millions of dollars in educating and training their technicians, and obtaining certifications that qualify them to properly service their products. Marine manufacturers put their confidence in certified dealers and technicians to maintain a given engine throughout its lifetime. Thus, any right—to—repair legislation must not undercut this important aspect of marine dealer's businesses.

Lastly, due to the repair information available to consumers, and the outlined emissions tampering concerns, the MRAA and the NMMA respectfully ask that you protect the boating industry in Pennsylvania by including the below language in all proposed right—to—repair legislation. It is important to note that this same amendment language has been adopted and passed in right-to-repair legislation in California, New York, and Minnesota. Furthermore, we anticipate that Oregon and Maine will also enact right-to-repair legislation which also exempts the non-road industry. We note that S.B. 744, which is currently in the Pennsylvania Senate, includes language to exempt the non-road industry and we encourage the House Committee to consider this approach.

Requested Amendment Language

Manufacturers, distributors, importers or dealers of all off-road (non-road) equipment, including without limitation, farm and utility tractors, farm implements, farm machinery, forestry equipment, industrial equipment, utility equipment, construction equipment, compact construction equipment, road-building equipment, mining equipment, turf, yard and garden equipment, outdoor power equipment, portable generators, marine, all-terrain sports and recreational vehicles (including racing vehicles), stand-alone or integrated stationary or mobile internal combustion engines, other power sources, (including without limitation, generator sets, electric/battery and fuel cell power), power tools, and any tools, technology, attachments, accessories, components and repair parts for any of the foregoing.

Thank you for your time and the consideration of our request. Please contact us at Jmcardell@nmma.org or Chad@mraa.com if you have any questions about our position or recommendations.

Sincerely,



Chad Tokowicz
Government Relations Manager
Marine Retailers Association of the Americas



Jesse McArdell
Midwest and Northeast Policy and Engagement
Manager