

CALIFORNIA OCEAN PROTECTION COUNCIL

MEETING MINUTES

Thursday, April 20, 2006
California Environmental Protection Agency
Coastal Hearing Room
1001 I Street
Sacramento, California
8:30 a.m. – 12:30 p.m.

Mike Chrisman, Secretary for Resources, Council Chair
Steve Westly, State Controller, Chair of the State Lands Commission
Cindy Tuck on behalf of Secretary for Environmental Protection
Sheila Kuehl, State Senator, Ex Officio Member
Pedro Nava, State Assemblymember, Ex Officio Member

1. Welcome and Councilmember announcements

Controller Steve Westly was welcomed as newest member of OPC. Cindy Tuck was present representing Cal/EPA. Bill Craven was present representing State Senator Sheila Kuehl.

Chair gave overview of meeting agenda and made announcements on the Governor's comments against additional off-shore oil and gas leasing, California's representation in a national ocean research needs plan, and an update on the *California and the World Ocean '06* conference planned for September 2006.

2. Consideration of adoption of January 13, 2006 meeting minutes

Steve Westly moved to approve the minutes as submitted, second by Mike Chrisman. Minutes were approved.

3. Public comment on non-agenda items

Tom Raftican (United Anglers): While generally supportive of OPC, he would like to see better integration of some systems. One example is the recent bottom trawl fishery rule proposed by the Fish and Game Commission (FGC). He expressed concern that the rule does not address habitat and water quality and suggested new fisheries should be reviewed by OPC. State Lands should have a role in review of the rule because lands are destroyed as well as the State Water Board because of impaired water quality. To manage on ecosystem basis, having issues highlighted before the State Water Board and State Lands through OPC would assist movement away from regulating on a fishery-by-fishery basis.

4. Consideration of funding for the position of Executive Policy Officer for the California Ocean Protection Council

Dr. Chris Blackburn presented the staff recommendation for Council consideration.

Council Comments:

Bill Craven suggested the resolution language be changed to clarify the Secretary of the OPC to take actions necessary.

Mike Chrisman emphasized that funding this position is very important to achieve the goals of the Council.

Public Comments: Warner Chabot and Linda Sheehan indicated support.

Resolution language: “The Ocean Protection Council finds pursuant to Sections 35600 *et seq.* of the Public Resources Code that funding an Executive Policy Officer position for the Ocean Protection Council, as herein described, is of high priority for ocean conservation and authorizes the Secretary to take actions necessary to provide \$350,000 for its implementation.”

The action initially deferred due to lack of quorum, but was later approved on a motion from Steve Westly.

5. Consideration of resolution on once-through cooling for coastal power plants

Neal Fishman provided a summary of the resolution as proposed.

Public comment:

Al Wanger (Coastal Commission) commended OPC on trying to tackle this issue and suggested revision to set a clear direction that the goal of State is to replace once-through cooling (OTC) with less damaging alternatives where feasible.

Audra Hartmann (Duke Energy) expressed concern that 6-month study won't be comprehensive enough to take into account complexities of plant operations, local governments, etc. Half of the facilities that will be undergoing study from Energy Commission and others. She suggested looking at previous/current work on once through cooling.

Rhett Millsaps (Stanford Environmental Law Clinic) expressed support for the staff recommendation generally. However, he suggests revision to implement 316(b) and go beyond it with more stringent standards. California should look to New York as model. He pointed out that the authority to do this in CA Coastal Act § 30230.

Ben Rottenburn (Stanford Environmental Law Clinic) expressed general support for the staff recommendation, but recommended removing technical feasibility and associated costs clauses in fourth resolve. Associated costs figures produced by power plants and are often biased.

Kaya Freeman (Central Coast Surfrider) Emphasized public's opposition to OTC, as evidenced by over 1500 e-mails. She suggested removal of any ambiguous language that the impacts of OTC are anything but significant. She suggested amendments to the resolution that tells the State Water Board that OPC rejects loopholes in present in the federal 316(b) rule. She indicated that there is a right and wrong way to do desal and it is inappropriate to piggyback desal plants onto antiquated OTC technology.

Mark Theisen (California Council for Environmental and Economic Balance (CEEB)): Request deferral of the resolution because CEEB has not had opportunity to review and comment. He expressed concern about timeframe for a feasibility study and the cost of the study.

Bill Powers (Powers Engineering) encouraged the Council to pass the resolution it today with amendments suggested by Surfrider. There should be three options with OTC: retrofit to wet cooling, replace, or retire. The nuclear plants must retrofit to wet towers. These retrofits already done and suggests it is relatively simple, inexpensive, seasonal downtimes to do it in. Conversions reduce efficiency by only 1-1.5%.

Linda Sheehan (CA Coastkeeper Alliance) expressed support to pass the resolution as suggested as timely passage will influence State Water board's draft rulemaking process. She commend coordination clause. She observed that Diablo Canyon power plant pays only \$20 in lease fees to the state; lease fees need to be revised. She suggested dedicated fund to be used for marine and coastal initiatives.

Dana Palmer (Santa Monica Baykeeper) echoed Linda Sheehan's comments and recommended passing the amended resolution. The staff resolution is more process oriented than action oriented and does not call for phase out of OTC; does not call on Energy Commission to require alternative technology when repowering. He supported resolution's request for real reductions in impingement and entrainment but be wary of flimsy baselines.

Robert Yamata (San Diego County Water Authority) generally supportive of staff resolution but desalination is integral to the planning strategy for California's water supply, especially in the south coast region. It is important to diversify supplies. The state expects 3-5% of its water supply from desalination by 2020, which is cost competitive with other new supplies. Co-location of desalination plants takes advantage of existing infrastructure, limits new impacts, and lowers cost to the customer. Subsurface intakes are not technologically, environmentally, or economically possible in many places.

April Wakeman (United Anglers Southern California) expressed support for the staff resolution however it should add that where alternative technology not be feasible, mitigation is a reasonable alternative provided it relates to the harm involved (i.e., consider enhanced fish habitat with fishing allowed).

Angela Haren (California Coastkeeper Alliance) expressed support for the resolution as amended. The resolution should state a commitment to ensuring reliable power supply, and that this is not in opposition to protecting the environment.

Sarah Abramson (Heal the Bay) encouraged the Council to demonstrate leadership. Huntington Beach power plant consumes 350 million larvae a year and impacts 30% of recreational fish caught each year. She suggested the state set a specific timeline for compliance. She supported the idea of convening technical review group to look at studies and impact reductions.

Warner Chabot (Ocean Conservancy) expressed support for the resolution as amended. Coastal power plants with this technology have a significant impact on commercial and recreational fisheries.

Tim Hemig (NRG West Coast) expressed support for OPC's mission; NRG serves the community with beach clean-up and invasive species control activities. He suggested the 90-95% reduction in entrainment/impingement could substantially increase costs compliance with the 316(b) process and will cause adverse impacts to air quality, greenhouse gas emissions, supply and reliability of power. EPA did the alternatives study and concluded that high retrofit and operating costs are not economically practical or technically feasible. He suggested the Council adopt a resolution at the next meeting.

Julie Malinowski-Ball (LA Dept of Water and Power) did not oppose the proposed resolution, but would like opportunity to discuss amendments.

Meg Catzen-Brown (CA Water Association and CA American Water Company) indicated the resolution adopted by staff is balanced, and was prepared to support it. If amendments are considered, she would appreciate more public process.

Council Comments:

Steve Westly recommended acting today and moved to vote with the amendments of 8 public commenters, Chairman Chrisman and Cindy Tuck. He emphasized that it is only a resolution not a rulemaking.

Bill Craven commented that the resolution is a strong statement and the amendments provide focus. The reference to applicable state laws should be included. It is important to streamline the study. He supported member Westly's comment that it is only a resolution and does not have a direct regulatory result. He expressed support for Councilmember Westly's motion, as a non-voting member.

Pedro Nava expressed support for Councilmember Westly's motion, as a non-voting member.

Cindy Tuck suggested the following amendments: In first resolve, SWRCB is the agency that implements 316(b): "Council urges the State Water Resources Control Board to form a

technical review group...” In second resolve, change “assist” to “encourage” or a like word.

Mike Chrisman stated he recognized the need for public participation and comment and the need to act on this motion. He moved that the Council reject the amendment that would delete the Energy Commission’s involvement in the six-month study. He emphasized that Energy Commission should be involved in every part of this process.

Resolution language: Final resolution language is attached as Exhibit 1.

The Resolution was adopted with amendments, two members voting in favor. Amendments were read into the record.

6. Draft Strategic Plan

Brian Baird overviewed the plan in general and OPC’s accomplishments to date, including Admiral Watkins’ holding of the Information, Research, and Outreach Strategy (IRO) as a national model. To draft the plan, staff sought input from the public, stakeholders, agencies, etc. Baird summarized the first two sections of the plan.

Neal Fishman overviewed how the OPC will be involved in the actions defined in the plan, referring to Appendix B, OPC Potential Roles for integrating, science and education, and funding. He reviewed Appendix A, and highlighted critical actions that may be pursued.

Council Comments:

Mike Chrisman commented on the amount of public feedback received. He encouraged staff and public to look at strategic goals; determine if we should adopt priorities over time; and further input from the public will be important as we finalize the plan in the next few months.

Steve Westly indicated we need to be very clear on what the goals are and what the timeframe is. The challenge is to think through how we can get the most ‘bang for the buck’ as we move forward. We need to stand up and do something for the oceans now.

Public Comment:

Linda Sheehan (Coastkeepers) indicated that California Leading country on Ecosystem Based Management. No one is doing this effectively. The difficult task is to integrate these environmental laws. The Council needs to address Klamath Salmon disaster evidence of need to look across sections and suggested using OSPER money to do monitoring data and State Water Board has additional funds.

John Ugoretz (Department of Fish and Game, California Marine Region) indicated he supports the plan. State agency steering committee is a good first step as there are on-going questions on overlapping jurisdiction. For example there are state water bottom

leases for marine protected areas. He suggest there is a need for support for research on bottom fishing, abalone and other fisheries and expansion of the PISCO and CRANE monitoring programs; it is critical to monitor nearshore resources.

Al Wanger (Coastal Commission) indicated he had a letter from the Commission to provide to Council staff. He suggested a committee to do interagency coordination and comprehensive management strategy. He suggests the Council develop a framework for managing land use on watershed basis, improving land use, and providing support tools and outreach to local governments.

Bill Douros (West Coast Regional Superintendent for the National Marine Sanctuary Program) expressed general support for the plan. OPC has already been very effective, in particular the Council's ability to spend money quickly and seek new approach. Creating a state agency steering committee is a good idea. Support regional approaches to management. Provide more resources to the marine region of the DFG. He proposed to add goal to better connect state and federal agencies. He supports regional governance and tri-state approaches.

Warner Chabot (Ocean Conservancy): Roosevelt was an environmental visionary. Those ideas were opposed by users of the resource at the time. Strategic plan is good roadmap. The goals and priorities should be moved up in document and staff should set specific quantifiable results that are to be achieved in five years. Otherwise, it is difficult to track the goals in five years.

Michael Sutton (Monterey Bay Aquarium) agreed with previous comments. The word "strategic" is about making tough choices. What is Council trying to accomplish? The draft is a bit of a smorgasbord and does not have a good sense of priorities. The dissipation of effort and funds is a threat.

Comments from the Council:

Steve Westly commented that the test of success is to identify our priorities. Mapping what is off our coast is important. How much and when we will have it mapped by should be identified. What are the priorities and what do we say we have actually accomplished. He suggested staff make the plan a little more concrete and tangible.

Mike Chrisman indicated that the "smorgasbord" is to get all the issues before the Council, and that staff needs to prioritize these issues and provide guiding principles. The strategic plan must be a dynamic document, perhaps on a yearly basis to determine what has been achieved.

Bill Craven expressed agreement with comments. The underlying themes are that people are anxious to see where the Council will go. It is incredibly important. Recommended editing of Section 3 and Appendix so it is possible to measure success and say when things will occur.

7. Marine Life Protection Act update

Sam Schuchat provided background on current MLPA process. DFG is now evaluating proposals for establishing MPAs. The Fish and Game Commission will consider the proposals over the summer and act on them in the fall. We are approaching the time when a second set of proposed MPAs will come into existence. We will need to establish a statewide capacity for managing monitoring activities that assist with MPA evaluation. It is advisable now for the OPC to reserve \$2 million for MPA monitoring to launch monitoring effort, and we'll come back at a later meeting with three things: a design (including monitoring principles), a work plan (including a timeline and cost options), and a resolution for OPC to adopt.

Public Comment:

John Ugoretz (DFG): Statewide oversight and guidance is required by MLPA. OPC should lead this effort. Baseline monitoring of other areas of the state outside of MPAs is important. Prioritization of what efforts are priorities for the OPC will be helpful.

Council Comments:

Mike Chrisman reminded Councilmembers that the federal government was a partner in the designation of Channel Islands and yet designation of federal area has not been resolved after four years. This makes it difficult for the state to manage the area.

Pedro Nava: Identifying \$2 million is a good start, but has seen estimates that are higher. How do you see us acquiring more resources? Schuchat: reports estimate the range from \$2 million to \$8-12 million a year. \$2 million will allow us to get monitoring for the existing new set of MPAs to a good start. As we add MPAs to the network, the increase in cost will not be linear. We need to find permanent ongoing source of money. Once we have a system, \$8-12 million a year seems like a reasonable ongoing cost. The state need to move quickly to ensure we have a baseline at the start of MPA designation.

Cindy Aronberg (on behalf of Steve Westly) asked what options you see for getting the rest of that estimate. Mr. Schuchat replied that the study on funding options for support of the network provides a good list of sources. OPC funded a report on funding options as well. Looking for funding that is non-capital in nature; recurring tidelands money, or other fees charged for ocean uses, would be good place to look.

Public Comment:

Mike Sutton (Monterey Bay Aquarium) advised the Council that he and others are working on a regional agreement on ocean health. The time is ripe for CA, OR, and WA to announce a cooperative agreement to improve ocean and coastal efforts. The agreement is being fleshed out, but will describe the CA Current Large Marine Ecosystem, highlight importance to each state, and identify state's efforts and issues of shared concern. States will collectively engage the federal government as well. Draft is expected by June and should be featured at California and the World Ocean in September.

Sam Schuchat mentioned the update on State Water Board proposed projects, handed out to the Council members.

8. Consideration of California Ocean Observing Systems Strategic Plan

Schuchat summarized the ocean observing report and the process to date. Because of a lack of a quorum, he suggested staff bring it back for adoption at the next meeting.

Public Comment:

Linda Sheehan (Coastkeeper Alliance) supported the recommendation, and stressed the importance of having this program housed at the Coastal Conservancy as proposed.

Warner Chabot (Ocean Conservancy) supported proposal as timely and well thought.

Council Comments:

Cindy Aronberg indicated that although not present, Councilmember Westly is generally supportive of the plan.

The meeting **adjourned**, to be reconvened in Monterey on June 8.



CALIFORNIA OCEAN PROTECTION COUNCIL

Mike Chrisman, *Secretary for Resources, Council Chair*
Steve Westly, *State Controller*
Alan Lloyd, *Secretary for Environmental Protection*
Sheila Kuehl, *State Senator, Ex officio Member*
Pedro Nava, *State Assemblymember, Ex officio Member*

Resolution of the California Ocean Protection Council Regarding the Use of Once-Through Cooling Technologies in Coastal Waters

Adopted April 20, 2006

WHEREAS, the California Ocean Protection Act mandates that the Ocean Protection Council (OPC) coordinate and improve the protection of California's ocean and coastal resources; and the Governor's Ocean Action Plan calls for the OPC to play a leadership role in managing and protecting California's oceans, bays, estuaries and coastal wetlands, including integration of coastal water quality programs to increase their effectiveness; and

WHEREAS, California currently has 21 coastal power plants that use once-through cooling technology to operate their plants, many of which are located on bays and estuaries, and these plants are collectively permitted to withdraw nearly 17 billion gallons of water per day; and

WHEREAS, the OPC is committed to maintaining energy reliability in California, and also recognizes the need to improve coastal and estuarine water quality and protect species diversity and abundance; and

WHEREAS, the U.S. Environmental Protection Agency (U.S. EPA) has determined, after a thorough review of the rulemaking record for implementation of section 316(b) of the Clean Water Act, that there are multiple types of undesirable and unacceptable environmental impacts associated with once-through cooling technology; and

WHEREAS, The U.S. EPA has found these types of impacts to include entrainment and impingement; reductions of threatened and endangered species; damage to critical aquatic organisms, including important elements of the food chain; diminishment of a population's compensatory reserve; losses to populations including reductions of indigenous species populations, commercial fisheries stocks, and recreational fisheries; and stresses to overall communities and ecosystems as evidenced by reductions in diversity or other changes in system structure and function; and

WHEREAS, a recent report by the California Energy Commission found that, of the 21 Californian coastal power plants that use once-through cooling, only seven have recent studies of entrainment impacts that meet current scientific standards; and all these studies have found that adverse impacts occur due to entrainment of aquatic organisms; impingement and entrainment result in changes to community structure; thermal impacts from the discharge of cooling water may be significant, particularly in enclosed water bodies; and the possible cumulative impacts of entrainment and impingement are currently unknown; and

WHEREAS, the 2005 Integrated Energy and Policy Report to the California Legislature recommended the OPC work with other agencies to improve assessment of the ecological impacts of once-through cooling and to develop a better approach to implementing best technology available; and

WHEREAS, on April 17, 2006, the California State Lands Commission passed a resolution urging the California Energy Commission and the State Water Resources Control Board to develop and implement policies that eliminate the impacts of once-through cooling on the environment; and

WHEREAS, staff members of State Water Resources Control Board, California Energy Commission (CEC), California Coastal Commission, and Ocean Protection Council have met and found it extremely helpful to coordinate roles due to the complex nature of coastal power plant permitting.

NOW, THEREFORE, the California Ocean Protection Council hereby:

RESOLVES that, in agreement with U.S. EPA findings, the environmental impacts from once-through cooling technologies for coastal power plants can be significant, and resolves to urge the State Water Resources Control Board to implement Section 316(b) and more stringent state requirements requiring reductions in entrainment and impingement at existing coastal power plants and encourages the State to implement the most protective controls to achieve a 90-95 percent reduction in impacts; and

FURTHER RESOLVES to encourage the State Water Resources Control Board's formation of a technical review group to ensure the required technical expertise is available to review each power plant's data collection proposals, analyses and impact reductions and fairly implement statewide data collection standards needed to comply with section 316(b); and

FURTHER RESOLVES to establish an interagency coordinating committee composed of staffs from the Water Boards, California Energy Commission, the Public Utilities Commission, California Coastal Commission, and others to integrate agency actions and coordinate regulatory authorities; and

FURTHER RESOLVES to fund a 6-month study that will analyze each of the existing coastal plant's conversion to alternative cooling technologies or installation of best technology available; and

FURTHER RESOLVES to work with the Water Boards, California Energy Commission, the Public Utilities Commission, California Coastal Commission, and others to investigate possible non-regulatory incentives that can accelerate desirable conversions of once-through cooling technologies, in addition to regulatory programs that can reduce the impact of once-through cooling technologies.