Ocean Protection Council Meeting
February 8, 2007
Public Comment

Date	Name	Affiliation	Subject of Communication
January 11, 2007	Linda Sheehan	California Coastkeeper Alliance	Draft Overview of Ocean and Coastal Laws
January 29, 2007	Tim Shestek	American Chemistry Council	Draft OPC Resolution on Preventing and Reducing Marine Debris
January 29, 2007	Sonia Nicholson	North East Trees	Draft OPC Resolution on Preventing and Reducing Marine Debris
January 30, 2007	Linda Sheehan	California Coastkeeper Alliance	Coordinated Monitoring of the Health of the State's Coastal Waters
January 31, 2007	Paul Dickinson	Keep California Beautiful	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 1, 2007	Congresswoman Linda T. Sanchez	U.S. House of Representatives	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 1, 2007	Shelly Backlar	Friends of the Los Angeles River	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 2, 2007	Mark Gold and 35 others	Heal the Bay and 35 others	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 2, 2007	Mark Gold and staff	Heal the Bay	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 2, 2007	Dan Jacobson	Environment California	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 2, 2007	Ryan Broddrick	Department of Fish and Game	Channel Islands National Park's Kelp Forest Monitoring Program
February 4, 2007	Scott Dosick	California Association of Local Conservation Corps	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 5, 2007	Vern Goehring	California Sea Urchin Commission	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 6, 2007	Mark Gold and staff	Heal the Bay	Supplemental Comments: Draft OPC Resolution on Preventing and Reducing Marine Debris
February 6, 2007	Margo Reid Brown	CIWMB	Draft OPC Resolution on Preventing and Reducing Marine Debris

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February 6, 2007	Yonat Swimmer	NOAA	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 7, 2007	Steve Aceti	California Coastal Coalition	Draft OPC Resolution on Preventing and Reducing Marine Debris
February 8, 2007	Joe Geever	Surfrider Foundation	Once-Through Cooling
February 8, 2007	Linda Sheehan and 12 others	California Coastkeeper Alliance	Once-Through Cooling Systems for Coastal Power Plants: Impacts of Riverkeeper, Inc., *et al*. v. U.S. Environmental Protection Agency, No. 04-6692-ag(L) (2nd Cir. Jan. 25, 2007)

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January 11, 2007

Mike Chrisman, Chair and Members
California Ocean Protection Council
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Comments on Draft "Overview of Ocean and Coastal Laws"

VIA EMAIL: COPCpublic@resources.ca.gov

Dear Chair Chrisman and Members of the Council:

On behalf of the California Coastkeeper Alliance and its 12 member Waterkeepers, spanning the coast from the Oregon border to San Diego, we welcome the opportunity to provide comments on your draft "Overview of Ocean and Coastal Laws" (Overview). We commend your staff for its comprehensive effort to collect the numerous authorities related to ocean management. The final document will be extremely useful as the Ocean Protection Council (Council) and its member agencies work together to manage the ocean as an ecosystem.

We have several suggestions for your consideration with regard to adding to and modifying the draft document; these are described below.

Section 2.3.9: Department of Fish and Game

We ask that you add to this section a discussion of DFG's water quality authority, found at Fish and Game Code Sections 5650 *et seq*. An excellent overview of the history, extent and use of this authority can be found in the Fall 2004 edition of The OSPR News.[1]

Section 9.1: Introduction to Chapter 9: Ocean and Coastal Protection

The language of this Introduction appears to define "point source pollution" as excluding stormwater (urban runoff), which is referenced only under "nonpoint source pollution." In fact, stormwater is treated as a "point source" in most permitting circumstances under the federal

[1] http://www.dfg.ca.gov/ospr/organizational/admin/news/osprnews/OSPR%20NEWS%20Fall%202004.swf.

Clean Water Act and should be referred to as such.[2] Urban runoff that is not regulated by NPDES permit under the federal Clean Water Act can be termed "nonpoint source." Accordingly, the OPC should consider renaming Section 9.4 "Stormwater Pollution," moving it to be a subsection under Section 9.2 (Point Source Pollution Controls), and adding information as needed from the references cited here to ensure clarity and comprehensiveness on this issue.[3] The current Section 9.3 ("Non-Point Source Pollution") is sufficient to address controls on urban runoff that is not regulated by NPDES permit.

Section 9.3: Non-Point Source Pollution

The current text in this Section, which describes voluntary efforts to control nonpoint pollution (or polluted runoff), can be retained. However, as CCKA testified to the OPC in November, it describes only a piece of the nonpoint pollution control arena in the state. As such, the current text should be re-numbered as a new subsection 9.3.2, with a new subsection 9.3.1 devoted to the actual law and regulations that govern nonpoint pollution in California.

The proposed Section 9.3.1, which could be called "Regulatory Controls under State Law," should discuss the mandates under California's Porter-Cologne Water Quality Control Act to regulate <u>all</u> sources of pollution, point and non-point, into both surface water and groundwater. The attached excerpt from materials submitted by CCKA for California Water Law Symposium 2006 provides a basic overview and interpretation of the law and its requirements.

Finally, this section (or a separate section) should also discuss Porter-Cologne's authority over groundwater, as studies have shown that contaminated groundwater can be an important source of beach pollution.[4]

Section 9.8: Water Quality Monitoring, Beach and Shellfish Contamination

First, it appears that the first paragraph of this Section was intended for the prior section on dredged materials; we suggest that it be reviewed.

Second, the last sentence under "Beach Contamination" is not entirely correct; in fact, the state does have a water quality monitoring program that is <u>supposed</u> to cover all surface waters of the state (and would do so with sufficient funding). This Surface Water Ambient Monitoring Program (SWAMP), should be the subject of a new subsection 9.8.1 (with the current 9.8.1 re-numbered to 9.8.2), since it is the state's primary water quality monitoring effort, and water quality monitoring required under many bond-funded projects must be done in SWAMP-

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[2] See http://www.waterboards.ca.gov/stormwtr/historical.html for a comprehensive history of this topic, in particular U.S. EPA's helpful Q&A document at http://www.waterboards.ca.gov/stormwtr/docs/epa_q&a.pdf. *See also* U.S. EPA's stormwater site at Thttp://cfpub.epa.gov/npdes/home.cfm?program_id=6.

[3] For example, Section 9.4 (p. 142) currently refers only to controls on municipal stormwater from cities of 100,000 or greater; this is "Phase I" of the municipal stormwater permitting program. Phase II, which is ongoing and should be referenced, includes smaller municipalities and "non-traditional" systems such as military bases, public campuses, and prison and hospital complexes. *See* http://www.waterboards.ca.gov/stormwtr/municipal.html.

[4] *See, e.g.*, http://www.research.noaa.gov/spotlite/archive/spot_beachpollution.html; http://www.scienceblog.com/community/older/2004/8/20047265.shtml.

compatible format. Detailed information about SWAMP can be found at http://www.waterboards.ca.gov/swamp/index.html.

Finally, we ask that clarification be made in the Beach Contamination subsection that the databases currently prepared are post-contamination incident, and that the OPC has funded work for a rapid indicator test to help the public make more informed choices about where to recreate.

* * *

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to call.

Sincerely,

Linda Sheehan
Executive Director

attachment

ATTACHMENT

California Water Law Symposium 2006

February 4, 2006

Panel #5: Waste Discharge Requirements: Beyond the Point Source

Linda Sheehan, California Coastkeeper Alliance

Excerpt

1. **Law**
    a. Federal law (CWA) exempts polluted runoff from NPDES permit requirements, but CWA Section 303(d) does require waters impaired by runoff to be formally identified. (*Pronsolino v. Nastri*, 291 F.3d 1123 (9th Cir. 2002 *cert. denied* 123 S.Ct. 2573 (June 16, 2003).) Identified waters must be cleaned up pursuant to state law.
    b. Unlike federal law, **California law requires polluted runoff to be regulated** through a form of "permits," called "waste discharge requirements" (WDRs) or "waivers of WDRs, with conditions." This law, the Porter-Cologne Water Quality Control Act, Water Code §§ 13000 *et seq*., commands that "the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state."
    c. Porter-Cologne, at §§ 13260 *et seq*., states that all who discharge, or propose to discharge, waste "that could affect the quality of the waters of the state" (which includes groundwater) must: (a) file a report of the discharge and, as needed, (b) implement waste discharge requirements that ensure that those discharges do not impact use of the state's waters. The local regional water board then determines whether the discharge should be regulated through waste discharge requirements, or through a waiver of waste discharge requirements accompanied by conditions under Section 13269.
    d. Nothing was done to implement this requirement with respect to polluted runoff until the early 1980s. At that time, most of the regional water boards added to their Basin Plans a waiver of waste discharge requirements for polluted runoff with essentially no conditions, based on the assumption that such pollution did not significantly affect water quality.
    e. Unlike NPDES permits, these waivers were not subject to regular review, and so they stayed in place until rescinded by a change in state law through SB 390 (1999), which was sponsored by Baykeeper. SB 390 rescinded, as of 1/1/03, all waivers of waste discharge requirements in all regions, thereby forcing their review for the first time in decades. It also made the waivers subject to five-year reviews.
    f. In late 2000, environmental, fishing and public health groups requested and formally petitioned the Central Valley Regional Board to rescind the two decades-old waiver for agricultural runoff, and instead regulate the pollution with waste discharge requirements (WDRs). The petition argued that the main condition of the waiver – that irrigators must prevent concentrations of pollutants toxic to fish or wildlife – was clearly and regularly being violated.
    g. In October 2003 Governor Davis, on his last day in office, signed SB 923, sponsored by The Ocean Conservancy, which (a) clearly authorized the State and Regional Boards to collect fees from dischargers of polluted runoff operating under waivers in order to pay for the costs of the program, (b) required waivers to include basic monitoring requirements, and (c) changed the standard for approving waivers of

WDRs from "not against the public interest" to "in the public interest." The new law went into effect on January 1, 2004.

2. Results – Irrigated Agriculture Example

a. As one example, different regions handle irrigated agricultural runoff differently:
   i. Central Coast – Region 3 – each grower registers separately though can act in coalitions (high compliance rate), UC Extension class required, group monitoring is occurring, fees are being paid, both groundwater and surface water discharges included, best management practices increasingly implemented (though significant work needed)
   ii. Ventura County – Region 4 – has a new agricultural runoff program; proximity to urbanized areas has prompted relatively high buy-in to start
   iii. Central Valley – Region 5 – waiver just renewed June 2006; included requirement that growers register separately (significant because lack of knowledge of participants - because registered in groups - has severely hampered success to date); monitoring is occurring but behind Central Coast in other areas (including groundwater discharges, which are still not part of program even though legally required)
   iv. The rest of state (six other regional water boards) is still not in compliance with state law with respect to irrigated agricultural runoff. Other sources of runoff, such as from grazing, can be even less regulated, despite the clear mandates in Water Code §§ 13260 *et seq*.

3. Next Steps

a. Existing waivers generally do not meet the Water Code Section 13000 requirement that "the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state."
b. The waiver provision in Section 13269 significantly over-utilized.
   i. This is particularly true for areas listed as "impaired" under 303(d) list, such as the Salinas River Watershed in Region 3.
   ii. Waiver provisions should either be used appropriately – *i.e.*, for truly low-impact, minor discharges – or should include <u>all</u> of the tools associated with WDRs.
   iii. Funding, notification, and enforcement tools in WDRs are lacking in waivers. The lack of progress statewide in implementing programs, and certainly in achieving clean water, illustrates results of that gap.
c. California's system of mandatory controls on polluted runoff goes beyond what is required elsewhere in the country, but is still inadequate to prevent further contamination of the state's limited supply of clean water. The state must limit the use of waivers to cases where they are truly "in the public interest," and fully implement the letter and intent of Porter-Cologne for all discharges to waters of the state, in order to ensure a ready supply of clean water for all.

January 29, 2007

American Chemistry Council Good Chemistry Makes It Possible

Mr. Drew Bohan
Executive Policy Officer
California Ocean Protection Council
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: Draft Resolution of the California Ocean Protection Council on Reducing and Preventing Plastic Marine Debris

Dear Mr. Bohan:

On behalf of the member companies of the American Chemistry Council (ACC), thank you for the opportunity to provide the following comments relative to the draft resolution on reducing and preventing plastic marine debris.

By way of background, ACC represents the leading companies engaged in the business of chemistry and plastics. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. Health care products, technology-enhanced agricultural products, protective packaging materials, longer-lasting paints, faster microprocessors, lightweight automobiles, and stronger composite materials in aircraft are only a few of the innovative products of our industry. In addition, ACC's plastics division represents many of the nation's leading resin producers.

ACC agrees with the Ocean Protection Council (OPC) that increased attention and specific action items need to be implemented to help reduce and control marine debris. To that end, ACC supports the following recommendations:

#2: Increase enforcement of anti-litter laws generally, and enforcement of laws to eliminate pollution by plastic resin pellets (nurdles): Resin pellets that are accidentally spilled during shipping, unloading, or when being used in a manufacturing facility can easily make their way into storm drains and eventually into our rivers, oceans and beaches. Though inert and benign in terms of their physical environmental impact, uncontained pellets become unsightly litter and pose a potential hazard to wildlife if ingested. To help address this environmental challenge, ACC's plastics division and the Society of the Plastics Industry have developed a pellet containment program called Operation Clean Sweep. Through the program, companies that manufacture, ship, handle and use plastic pellets can implement a series of best industry practices that cover everything from the proper recovery and disposal of spilled pellets to preventing spills from happening in the first place. All of the information companies need to implement Operation Clean Sweep is available online and free of charge at http://www.opcleansweep.org.

Efforts are currently underway to implement a broad-based public/private partnership enforcement initiative between the plastics industry and the Los Angeles Regional Water

Quality Control Board that seeks to stop pellets from entering area storm drains, rivers, bays, and the ocean. ACC encourages the active participation of the OPC to help support this initial initiative as well as explore opportunities to expand this enforcement effort, as well as activities to increase enforcement of ***all anti-litter*** ordinances statewide.

#4: Continue and expand watershed-based cleanups: ACC, as well as several of our member companies have been long-time supporters of organizations such as Keep America Beautiful (KAB), Keep California Beautiful (KCB) and the Clean Beaches Council (CBC). ACC will continue to pledge its support for beach cleanup activities in California and on a national level and looks forward to working in partnership with the OPC on additional opportunities in California.

#5: Increase the availability to trash, recycling and cigarette butt receptacles at public places, schools, and commercial establishments statewide: Increasing recycling and litter disposal opportunities is a prudent step that both the public and private sector should embrace. As an example, ACC's plastics division – working with grocery stores, retailers, plastic bag manufactures, and others - helped create and implement www.PlasticBagRecycling.org, the state's most comprehensive website and database aimed at helping to facilitate bag recycling. In addition, we currently provide technical assistance to local governments, recyclers, and other stakeholders to help increase the amount of material diverted through curbside or drop-off recycling programs. ACC remains committed to helping local governments and other stakeholders increase the amount of plastic material that is recycled.

#6: Promote environmental education and outreach on the impacts of plastic debris and litter prevention: As mentioned above, ACC continues to support increased anti-litter and marine debris educational programs through organizations such as KAB, KCB and CBC. In addition, ACC recently committed nearly $100,000 to the Aquarium of the Pacific in Los Angeles County for a permanent marine debris educational program aimed at reaching young people on the importance of recycling and disposing of items properly. We continue to be open to exploring additional public education opportunities.

While we support the above listed policy recommendations, we have some concerns associated with recommendations #1 and #3. First, prior to suggesting that the state extend the redemption value program (CRV) to "other plastics commonly found in marine debris" we believe that several logistical and implementation issues must be examined further.

- What are the potential administrative costs that would be required to implement a deposit program that would cover potentially thousands of various products, including those from several different material types and sizes (i.e. beverage cups, plates, take-out containers, lids, straws, cutlery, caps, etc)?

- Would the current redemption center infrastructure be required to handle all of this new material?

- Would consumers be asked to return these products to a redemption center or point-of-purchase to collect their deposit? From a practical and logistical

standpoint, is it reasonable to expect consumers to hold on to an empty coffee cup or clamshell package from a fast food establishment and then take the time to return these products to a redemption center?

- How would small products such as straws or lids be labeled to ensure they are redeemed appropriately and to reduce any possible fraud?

We also are concerned that extending the CRV to "plastic only" products is essentially a "de-facto" ban on this material, as consumers and retail establishments are likely to switch to a packaging material that does not carry the deposit. In our view, this recommendation would simply result in switching the composition of the litter/marine debris stream. The current CRV program covers a variety of beverages packaged in various packaging materials, glass, aluminum, plastic, etc. Any extension of the CRV program should not place one material type at a competitive advantage over another.

Second, recommendation #3 suggesting that the state "seek innovative methods to reduce plastic waste" also warrants additional research. To be truly effective, these methods should target ***all*** waste and not be limited to one material. New packaging materials are emerging in the marketplace that make various claims associated with degradation. To our knowledge, little if any scientific research has been conducted regarding potential environmental impacts should a significant amount of "degradable" materials enter the state's waterways.

It is important to note that switching to these "degradable" materials is not without environmental impacts. As one example, the production of corn for the raw material of PLA has substantial water quality impacts. In short, there are no "silver bullet" solutions to marine debris – the only effective way to reduce the amount of onshore-generated material that enters the ocean is to increase recycling and diversion where feasible and reduce the improper disposal of all types of trash.

Furthermore, many in the recycling industry have expressed concern over the widespread use of degradable beverage containers that are now emerging in the marketplace and the negative impact these containers could have on the current plastic bottle recycling stream. Bio-based packaging material degrades under appropriate composting conditions. However, bio-based packaging that is included in the regular municipal solid waste stream will likely find its way to a landfill where degradation will not occur. Also, a PLA bottle that is discarded on the grass might be around for months. These facts are important to consider when discussing potential policy options or recommendations. To that end, ACC suggests the OPC first encourage additional scientific research before supporting the widespread use of alternatives to plastic packaging.

Finally, while we recognize that plastic – or any material for that matter – that is illegally littered or disposed of poses a potential threat to the environment and marine life, the resolution's preamble presents only a partial view of this issue. While plastic may comprise the bulk of material that is found in the marine litter stream, it should come as no surprise given that plastic has become a preferred packaging material for several reasons, including some significant environmental benefits. For example, plastics help manufacturers make products using less material by lightweighting and thin-walling

consumer product packaging. Just 2 pounds of plastic can deliver 1000 ounces – roughly eight gallons – of a beverage. Three pounds of aluminum, 8 pounds of steel or 27 pounds of glass would be needed to deliver the same amount. Plastics also make packaging more efficient, thereby conserving resources. As a result, the consumer can buy larger, economy size products that are convenient to use. It also means that it takes fewer trucks and therefore less fuel to deliver these products to market.

Franklin Associates, Ltd., a leading practitioner in life-cycle studies, has conducted research to compare the life cycle energy impacts of plastics and alternative materials. One study that compared the energy required to manufacture, use, and dispose of common packaging items such as polystyrene food packaging found that by using plastic, manufacturers save enough energy each year to power a city of 1 million homes for roughly three-and-a-half years. ACC believes these facts should be included in the "Whereas" section of the resolution in order to provide a complete, life-cycle perspective.

The draft resolution also makes a broad statement regarding "potentially harmful constituents" of plastics but also indicates that "research is being conducted" to determine whether these chemicals could migrate into human and animal tissue. ACC members support credible, scientifically-sound and risk-based research into potential human and environmental impacts of chemicals and products. Scientific research is a complex undertaking that requires a complete understanding of toxicity levels, dose response rates, etc. ACC urges the OPC to avoid making sweeping generalizations about chemicals and "potential" harmful effects.

ACC sincerely appreciates the opportunity to provide these comments and looks forward to working with the OPC and all stakeholders to reduce and prevent plastic marine debris. Should you have any questions or comments, please do not hesitate to contact me at 916-448-2581 or via email at tim_shestek@americanchemistry.com

Sincerely,

Tim Shestek
Director, State Affairs and Grassroots

January 29, 2007

California Ocean Protection Council
Mike Chrisman, Chair and Members
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653-8102
COPCpublic@resources.ca.gov

Re: February 8, 2007 Marine Debris Resolution

Dear Chair Chrisman and members of the Council:

Plastic trash in our ocean and on our beaches is devastating to ocean wildlife, unhealthy for families that use California's beaches and undermines our coastal tourism economy. As statewide representatives of nonprofit organizations, with hundreds of thousands of members collectively, we support your leadership and the actions identified in your Ocean Protection Council (OPC) February 2007 Marine Debris Resolution. Although this resolution is a step in the right direction, we urge your Council to take stronger, yet practical actions to set specific and measurable goals, and a timeline to reduce marine debris. Specifically, we ask the OPC to amend your Resolution for action to:

- Set marine debris reduction goals and a timeline for achievement of these goals. Specifically, the Resolution should call for setting target reductions in the amount of plastic fast-food packaging and single-use plastic food packaging, as these are major components of marine debris. The Resolution should also set target reductions in the amount of derelict fishing gear found off the California coast.
- Call for a phased ban of expanded polystyrene (e.g. Styrofoam), a toxic type of plastic, and a major component of marine debris. The Cities of Santa Monica, Ventura, Malibu, Berkeley, San Clemente, and others have already implemented some type of expanded polystyrene ban.
- Call for regulations to control the release of pre-production plastic resin pellets into the natural environment during their production and distribution.
- Call for a reduction of toxic additives (including phthalates, Bisphenol A, and styrene) found in disposable plastic items that are commonly found in marine debris, including single-use plastic food packaging, fast-food packaging, and pre-production plastic resin pellets.

We urge the OPC to continue to provide strong policy leadership and improve coordination among state agencies to make California the national leader on reducing marine debris. The ultimate success of an inter-agency commitment to reduce marine debris depends upon your Council setting clear, measurable goals for reduction of trash on our beaches and in our oceans.

Our beaches and ocean are a public trust, belonging to all Californians. The Ocean Protection Council can provide national leadership to restore the health of this legacy.

Signed,
Sonia Nicholson
Architect
North East Trees

cc: Drew Bohan
Executive Policy Officer
drew.bohan@resources.ca.gov

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January 30, 2007

Mike Chrisman, Chair and Members
California Ocean Protection Council
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

VIA EMAIL: COPCpublic@resources.ca.gov

Re: Coordinated Monitoring of the Health of the State's Coastal Waters

Dear Chair Chrisman and Council Members:

On behalf of the California Coastkeeper Alliance and its 12 member Waterkeepers, who work to protect the coast from the Oregon border to San Diego, I am writing to request that the Ocean Protection Council take a leadership role in ensuring the swift implementation of SB 1070 (Kehoe). This bill, signed into law last fall, directs Cal/EPA and the Resources Agency to work with the State Lands Commission and others to improve the monitoring of, and reporting back on, the health of the state's waterways. By guiding this effort, the Ocean Protection Council would be implementing both its own Strategic Plan and a key recommendation of the U.S. Commission on Ocean Policy: the development of a "coordinated, comprehensive monitoring network that can provide the information necessary for manager to make informed decisions . . . and assure effective stewardship of ocean and coastal resources."[1]

Californians should be able to readily access basic information about their waters, and how well those waters are protected and restored. By their recent approval of Proposition 59, California voters indicated their strong support for open and transparent government. The governance of California's waters should be carried out in a similarly open and accountable manner. As the Commission on Ocean Policy noted, "[m]ore than any other measure, monitoring provides accountability for management actions."[2]

However, according to California's 2002 biennial monitoring report to U.S. EPA, the state can only report on the health of 22% of its coastal shoreline, 34% of its lakes and reservoirs, and 15% of its rivers and streams. There is no single place where a member of the public can go to understand the health of water bodies in his or her own backyard, or even to get an overall

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[1] U.S. Commission on Ocean Policy, *An Ocean Blueprint for the 21st Century: Final Report*, Ch. 15, "Creating a National Monitoring Network" (2004); http://www.oceancommission.gov/documents/full_color_rpt/15_chapter15.pdf.
[2] *Id*. at 226.

picture of the health of the state's waters. SB 1070 would begin to address this problem by setting up a California Water Quality Monitoring Council made up of agencies and others who track water health. The Council would make recommendations to Cal/EPA and the Resources Agency on how to improve the collection, coordination, integration and dissemination of data, and how to ensure that the data are summarized in an easily accessible and understandable format for the public.

The Ocean Protection Council's over-arching role provides an ideal structure for initiating and guiding the state's implementation of SB 1070. While SB 1070 address waters throughout the state, most of those waters drain to the ocean, and the majority of the key entities involved with monitoring are connected with the Council. Moreover, the Council's expertise in facilitating grant-funded work will provide important guidance needed to help ensure, as required by SB 1070, that state-funded water quality improvement projects also generate information needed to track project effectiveness in achieving clean water and healthy ecosystems. (Water Code § 13181(a)(1).) Proposition 84 reinforces the need for tracking the success of projects, allowing for up to 10% of the funds allocated for each program to "finance planning *and monitoring* necessary for the successful design, selection and implementation of the projects authorized," and requiring water quality data to be integrated into the State Water Board's Surface Water Ambient Monitoring Program. (Pub. Res. Code § 75072 (emphasis added).)

Finally, the Council's ongoing development of model ocean observing systems provides an excellent foundation for linking land-based monitoring systems with ocean-based observing systems, one of the key recommendations of the U.S. Commission on Ocean Policy.[3]

We urge the Council to again lead the nation in the implementation of the U.S. Commission on Ocean Policy's recommendations, by guiding implementation of the coordinated water monitoring requirements of SB 1070. There are several deadlines of which the Council should be aware, if the Council does take on this important effort. (*See* Water Code § 13181.) They are:

- December 1, 2007 – Resources Agency and Cal/EPA shall enter into an MOU to set up the Water Quality Monitoring Council
- April 1, 2008 – Monitoring Council shall complete an inventory of existing water quality monitoring and data collection efforts statewide, and make that inventory available to the public.
- December 1, 2008 – Monitoring Council must report back to Cal/EPA and the Resources Agency on its recommendations for improved (*i.e.*, more effective, efficient, coordinated and public) monitoring efforts statewide.

We urge the Council to consider working to achieve these goals in advance of their set deadlines, if at all possible. Early direction to grant recipients and others working to protect the state's waters will significantly improve tracking of the success of these efforts. There is much

[3] *Id.*, Recommendation 15-2 (NOAA "should ensure that the national monitoring network . . . is linked to the Integrated Ocean Observing System"). An interactive map of the ocean observing interface is now available at http://oceanobs.org/map/.

information and guidance already available to begin this effort; for example, the Bay/Delta and Tributaries Database Project (BDAT), which is an effort to coordinate data from a variety of different agencies.[4] Moreover, SB 1070 itself provides significant direction for prioritization of effort, particularly as the program begins. Among other things, it directs the state to begin with state agency data, and focus on information that will:

- support and improve upon our understanding of the extent to which our waters meet existing beneficial uses, including uses established pursuant to the Clean Water Act, Safe Drinking Water Act, and other federal and state statutes;
- improve coordination of ongoing programs, rather than necessarily creating new ones;
- assess measurable progress in improving water quality through program and project implementation, including bond-funded projects;
- guide "on the ground" management and regulatory activities and decisions; and
- create an evolving presentation of the health of the state's waterways that is readily accessible to, and understandable by, the public.

State agencies specifically referenced in the bill for involvement this effort include, but are not limited to, the State and Regional Water Boards, the Department of Fish and Game, the California Coastal Commission, the State Lands Commission, the Department of Parks and Recreation, the Department of Forestry and Fire Protection, the Department of Pesticide Regulation, and the State Department of Health Services.

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The Ocean Protection Council's Strategic Plan specifically lists the following as goals: integrated governance through interagency collaboration, improved understanding of ocean and coastal ecosystems, monitoring of conditions and trends of ocean and coastal ecosystems, improved water quality testing programs, and increased public awareness and stewardship of ocean and coastal resources. These goals are consistent with the goals of SB 1070. By taking on a leadership role in the implementation of SB 1070, the Council will be implementing not only its own Strategic Plan, but also a major recommendation in the national Commission on Ocean Policy's *Ocean Blueprint*. We would welcome the opportunity to work with the Council to achieve these twin goals.

Thank you for your continued strong support for a healthy coast and ocean.

Best regards,

Linda Sheehan
Executive Director

[4] http://www.waterboards.ca.gov/nps/docs/tmc/2005/072005pres_bdat.pdf.

KEEP CALIFORNIA BEAUTIFUL, INC.

Officers:

Paul Dickinson, *President*
Lawrence Livermore National Laboratory

John Enriquez, Vice President
Kern County Heritage Commission

Richard Anthony, *Treasurer*
Richard Anthony Associates

Andrea Lewis, Secretary
CAL/EPA

Board Members:

Linda Adams
Secretary, Cal/EPA

Margo Reid-Brown
CA Integrated Waste Management Board

Chris Campbell
California Partnerships, Inc.

Mike Chrisman
Secretary for Resources

Ruth Coleman
CA State Parks

Ronald Exley
CA Police Activities League

George J. Gomes
CA Farm Bureau Federation

Elmer Heap
City of San Diego

Randell H. Iwasaki
Caltrans

Jackie Luca
Northrop Grumma

Chris McKenzie
League of CA Cities

Kris McNamara
The Walt Disney Company

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Purvis Enterprises, Inc

Leonard E. Robinson
CA Dept. Toxic Substance Control

Susan Sakakihara
CA Integrated Waste Management Board

William Schmicker
Pegasus Group

Tim Shestek
American Plastics Council

Jennifer Blanchard Smith
McDonald's Corporation

Jack Stewart
CA Manufacturers & Technology Association

S. Kent Stoddard
Waste Management

Don Wolfe
County of Los Angeles

Executive Director:
Marlene K. Mariani

January 30, 2007

The Honorable Mike Chrisman
Chair, California Ocean Protection Council
1330 Broadway, Suite 1300
Oakland, CA 94612
c/o Rebecca Pollock, Project Manager

RE: Resolution on Reducing and Preventing Plastic Marine Debris

Chairman Chrisman and Members of the Council,

Thank you for the opportunity to comment on the subject Resolution. I had intended to deliver these comments in person, but was unable to attend the February 8, 2007, hearing. I have volunteered my time to Keep California Beautiful (KCB), the state's only non-profit organization with a primary focus on litter, for the past fifteen years and currently serve as President of the Board of Directors. The views I offer below are my own, however, and do not necessarily represent those of the other members of the Board.

I am pleased to endorse this Resolution and congratulate the Ocean Protection Council on the leadership it is taking on this vital and growing issue of litter and marine debris. As the Resolution summarizes, litter is massive and multi-dimensional problem in California. Not only is it unsightly and often involves issues of public health, litter abatement is a significant drain on the resources of state and local government and the private sector. As you know, CalTrans alone will spend $55 million this fiscal year cleaning up litter. It is in the interest of all Californian's to be focused and aggressive in dealing with this problem.

To help us focus, we are fortunate in that the Coastal Commission, with funding from the State Water Resources Control Board, has recently released a major study of the problem entitled "Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from the Plastic Debris Project." In my view, this is a timely and very well done analysis which offers a long list of recommendations for action, some of which are addressed in the subject Resolution. I wish to call to the Council's attention, however, an important point highlighted early in the report (pg. 10). An earlier effort, "The California Marine Debris Action Plan of 1990," resulted in 22 recommendations for reducing marine debris. "The recommendations focused on addressing enforcement of existing laws, educating the public, conducting more research and enacting new legislation. There was no coordinated effort to oversee the Plan's implementation. Only a few of the Plan's recommendations were implemented." Sixteen years later, there is still no single state agency responsible for dealing with the litter problem, nor a formal structure to facilitate better coordination among state agencies and local government. As noted in the subject Resolution, "the problem of marine debris is increasing . . . . . the densities of micro-plastics have tripled during the last decade." The current Marine Debris Action Plan goes on to stress "A State Mandate to Eliminate Marine Debris is Necessary . . . . . Without a mandate and funding to ensure that litter prevention and marine debris control measures are

implemented and well coordinated, efforts to reduce marine debris will likely be piecemeal and fail to address many of the most important needs."

One important factor that is different now when compared to 1990 is the existence of the Ocean Protection Council. Steps should be taken to understand why action on the 1990 Plan was limited and what is required to assure success against the 2006 Plan, especially in addressing issues of inter-agency coordination. The proposed Resolution represents an important first step. I am particularly supportive of action #6, "Promote environmental education and outreach on the impacts of plastic debris and litter prevention." This would be an excellent place to start, representing an area of common interest among state agencies and an opportunity to leverage resources for a broader collective impact.

Once again, I appreciate the opportunity to offer my comments and endorsement of this important Resolution. I urge the Council to continue it's efforts to address this critical issue and to consider a legislative mandate to assure that, this time, there is a long term, multi-dimensional and well coordinated state response that will gain the attention and cooperation of all Californians in addressing the litter and marine debris problem.

Sincerely,

Paul R. Dickinson
President, Board of Directors

MEMBER:
COMMITTEE ON THE JUDICIARY
COMMITTEE ON GOVERNMENT REFORM
COMMITTEE ON SMALL BUSINESS
ASSISTANT WHIP

Linda T. Sánchez
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Congress of the United States
House of Representatives
Washington, DC 20515

February 1, 2007

California Ocean Protection Council
Mike Chrisman, Chair and Members
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: February 8, 2007 Marine Debris Resolution

Dear Chairman Chrisman and Members of the Council:

Plastic trash in our ocean and on our beaches is devastating to ocean wildlife, unhealthy for families that use California's beaches, and undermines our coastal tourism economy. As an elected representative for a region of Los Angeles County that values its nearby ocean and beaches, I support your leadership and the actions identified in your Ocean Protection Council (OPC) February 2007 Marine Debris Resolution. Although this resolution is a step in the right direction, I urge your Council to take stronger, yet practical actions to set specific and measurable goals, and a timeline to reduce marine debris. Specifically, I ask the OPC to amend your Resolution for action to:

- Set marine debris reduction goals and a timeline for achievement of these goals. Specifically, the Resolution should call for setting target reductions in the amount of plastic fast-food packaging and single-use plastic food packaging, as these are major components of marine debris. The Resolution should also set target reductions in the amount of derelict fishing gear found off the California coast.
- Call for a phased ban of expanded polystyrene (e.g. Styrofoam), a toxic type of plastic, and a major component of marine debris. The Cities of Santa Monica, Ventura, Malibu, Berkeley, San Clemente, and others have already implemented some type of expanded polystyrene ban.
- Call for regulations to control the release of pre-production plastic resin pellets into the natural environment during their production and distribution.
- Call for a reduction of toxic additives (including phthalates, Bisphenol A, and styrene) found in disposable plastic items that are commonly found in marine debris, including single-use plastic food packaging, fast-food packaging, and pre-production plastic resin pellets.

I urge the OPC to continue to provide strong policy leadership and improve coordination among state agencies to make California the national leader on reducing marine debris. The ultimate

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success of an inter-agency commitment to reduce marine debris depends upon your Council setting clear, measurable goals for reduction of trash on our beaches and in our oceans.

Our beaches and ocean are a public trust, belonging to all Californians. The Ocean Protection Council can provide national leadership to restore the health of this legacy.

Sincerely,

Linda T. Sánchez
U.S. Congresswoman

cc: Drew Bohan
Executive Policy Officer

Friends of the Los Angeles River

1 February 2007

California Ocean Protection Council
Mike Chrisman, Chair and Members
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653-8102
COPCpublic@resources.ca.gov

Re: February 8, 2007 Marine Debris Resolution

Dear Chair Chrisman and members of the Council:

Plastic trash on our beaches and in our ocean, rivers, creeks, and watersheds is devastating to ocean and riparian wildlife, unhealthy for families that use California's beaches and waterways, and undermines our coastal tourism economy. Friends of the Los Angeles River (FoLAR) supports your leadership and the actions identified in your Ocean Protection Council (OPC) February 2007 Marine Debris Resolution. Although this resolution is a step in the right direction, we urge your Council to take stronger, yet practical actions to set specific and measurable goals, and a timeline to reduce marine debris. Specifically, we ask the OPC to amend your Resolution for action to:

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We urge the OPC to continue to provide strong policy leadership and improve coordination among state agencies to make California the national leader on reducing marine debris. The ultimate success of an inter-agency commitment to reduce marine debris depends upon your Council setting clear, measurable goals for reduction of trash on our beaches and in our oceans, rivers and creeks.

Our coast and waterways are public trusts, belonging to all Californians. The Ocean Protection Council can provide national leadership to restore the health of these legacies.

Signed,

Shelly Backlar

Shelly Backlar, Executive Director
cc: Drew Bohan, Executive Policy Officer, drew.bohan@resources.ca.gov

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February 2, 2007

California Ocean Protection Council
Mike Chrisman, Chair and Members
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653-8102
COPCpublic@resources.ca.gov

Re: February 8, 2007 Marine Debris Resolution

Dear Chair Chrisman and members of the Council:

Plastic trash in our ocean and on our beaches is devastating to ocean wildlife, unhealthy for families that use California's beaches and undermines our coastal tourism economy. As statewide representatives of nonprofit organizations, with over a million members collectively, we support your leadership and the actions identified in your Ocean Protection Council (OPC) February 2007 Marine Debris Resolution. Although this resolution is a significant step in the right direction, we urge your Council to take stronger, yet practical actions to set specific and measurable goals, and a timeline to reduce marine debris. Specifically, we ask the OPC to amend your Resolution for action to:

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We urge the OPC to continue to provide strong policy leadership and improve coordination among state agencies to make California the national leader on reducing marine debris. The ultimate success of an inter-agency commitment to reduce marine debris depends upon

your Council setting clear, measurable goals for reduction of trash on our beaches and in our oceans.

Our beaches and ocean are a public trust and a legacy, belonging to all Californians. The Ocean Protection Council can provide national leadership to restore the health of this legacy.

Signed,

Mark Gold, D.Env
Executive Director
Heal the Bay

Warner Chabot
Vice President for Regional Operations
The Ocean Conservancy

Linda Sheehan
Executive Director
California Coastkeeper Alliance

David Beckman
Senior Attorney
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Executive Director
San Diego Coastkeeper

Dana DuBose
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Charlie Saylan
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Ocean Conservation Society

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Mati Waiya
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Ron Bottorff
Chair
Friends of the Santa Clara River

Amanda Goeke
Managing Director
Ballona Wetlands Land Trust

Noelle Morris
Executive Director
San Diego Oceans Foundation

Jane Bradford
President
La Jolla Friends of the Seals

Sonia Nicholson
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Susy Holyhead
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Sustainable Works

Elisabeth M. Brown, Ph.D
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Environmental Charter High School

Irma Munoz
Mujeres De La Tierra (Women of the Earth)

cc: Drew Bohan
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February 2, 2007

California Ocean Protection Council
Mike Chrisman, Secretary for Resources and California Ocean Protection Council Chair
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653-8102
COPCpublic@resources.ca.gov

Re: February 8, 2007 Marine Debris Ocean Protection Council Resolution

Dear Mike Chrisman, Secretary for Resources and California Ocean Protection Council Chair, and Council Members:

In advance of the February 8th 2007 meeting in Santa Monica, California, the Ocean Protection Council (OPC) has issued a Resolution calling for identification of the top priority solutions from the June 2006 Plan of Action prepared by the Plastic Debris Project. Heal the Bay, an environmental nonprofit dedicated to making Southern California coastal waters and watersheds safe, healthy and clean, supports the kinds of actions identified in the Resolution, but calls upon the OPC to further strengthen this Resolution with specific and measurable goals, and quantifiable steps to reduce marine debris.

Marine debris (plastic trash in particular) significantly alters and impacts the marine environment. For example, marine debris has been linked to impacts to 267 species world-wide.[1] Researchers in the north pacific ocean found that the mass of plastic in these waters was six times the mass of plankton.[2] Additionally, a study during a sea-bird die-off on the central coast of California in 2002-2003 found that plastic fragments occurred in the stomach contents of 71% of the Northern Fulmars and 100% of the Red Phalaropes examined.[3]

Moreover, marine debris has demonstrated economic consequences on marine industries.[4] Marine debris may also have direct impacts on California's tourism industry. California's ocean economy fuels 86% of our State's total economic activity.[5] Coastal and Ocean tourism generated 12 billion of the Gross State Product (GSP) in California in 2000, which comprised 58% of the 2000 GSP when compared to other coastal industries (transportation, ship and

[1] D.W. Laist, 1997. "Impacts of marine debris: entanglement of marine life in marine debris including a comprehensive list of species with entanglement and ingestion records" In Coe, J.M., Rogers, D.B. (Eds.), Marine Debris—Sources, Impacts, and Solutions: Springer-Verlag, New York, 99-139.
[2] Moore *et al*., 2001. A comparison of plastic and plankton in the North Pacific central gyre. *Marine Pollution Bulletin*, vol. 42, No. 12:129-130.
[3] California Coastal Commission, June 2006. "Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from The Plastic Debris Project, p.23-24.
[4] *Id*. p25-26.
[5] National Ocean Economics Program, July 2005 "California's Ocean Economy," p.1.

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boatbuilding, minerals, living resources, and construction).[6] Our ocean economy is largely based on the California's coastal and marine natural resources; these resources deserve protection from the widespread threat of marine debris.

The OPC resolution comes at a critical juncture in time; despite past efforts to control marine debris, the quantity of debris in oceans and on beaches is increasing dramatically world-wide.[7] We support the Resolution's call to take action to reduce the sources of plastic marine debris through an extension of California Redemption Value (CRV), imposition of litter fees and banning the most harmful materials, but we strongly urge the OPC to also provide policy leadership and improve coordination among state agencies on the critical issue of marine debris by amending the Resolution as follows:

1) **The Resolution should call for coast-wide goals for marine debris reduction, using the recently created 3-state Ocean Coalition, and asking British Columbia, Hawaii and Baja California to join**. It is imperative to set reduction goals, and the Resolution should call for state action to do so. For example, Clean Water Act "Total Maximum Daily Loads" (TMDLs) for trash have set pollution limits for trash on a waterbody by waterbody basis. Setting statewide reduction goals would greatly assist both the regulated community in meeting its legal mandates for clean water, and the State Water Board in meeting its requirements to protect and restore our waters. Moreover, marine debris reduction goals would allow other state regulatory and programmatic efforts with trash (such as solid waste regulation, packaging regulation, etc.) to be meaningfully calibrated. Further, since marine debris is a crisis of global proportions, it should be addressed on a multi-regional scale--California is uniquely suited to be a leader of such an effort.

2) **The Resolution should incorporate a directive to implement California Redemption Value (CRV) expansion and increase of processing fees within a meaningful time period.** The CRV program has been successful in diverting >60% of aluminum, glass and some plastic containers from landfills to recycling centers since its inception in 1986. The majority of trash Heal the Bay collects during the thousands of beach and river clean-ups that we have led is comprised of non-recyclable plastics (e.g., plastics with resin codes 3-6).[8] Placing a CRV on additional plastic materials will assure that many of them are diverted from beaches and the ocean to an appropriate collection center. Unclaimed CRV funds could be used to clean up our seas by the installation and/or maintenance of storm drain screens/inserts in high priority regions; public education about the CRV expansion; and improving anti-litter enforcement. Likewise, increased processing fees are in line with the well-accepted principle of "polluter pays," and are necessary to internalize the cost of disposing/recycling the product.

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[6] *Id*. p.11-26.
[7] California Coastal Commission, June 2006. "Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from The Plastic Debris Project.
[8] Heal the Bay, (2005) Adopt-A-Beach data for Santa Monica.

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3) **The Resolution should call for the timely development of state regulation of litter associated specifically with single-use items, such as fast-food containers.** Litter from fast-food establishments and convenience markets is a large component of the litter found on California's beaches. In fact, a study on the composition of beach debris in Orange County found fast-food containers to be the second most abundant type of plastic found in their study.[9] At a minimum, the Resolution should call for setting target reductions in the amount of plastic fast food packaging, and should institute development of regulatory mechanisms to timely reach those targets. Such mechanisms could involve establishment of a fee on fast-food establishments and convenience markets, or expansion of current packaging laws to regulate fast-food packaging specifically and incentivize alternatives. In 2005, Oakland instituted a fee on fast-food restaurants, gas stations, convenience markets, and liquor stores to fund litter and trash clean-up. Similar fees exist in the states of Virginia and Ohio. With the advent of cost-effective plastic alternatives (biodegradable and/or compostable, in addition to recyclable alternatives), incentive programs are now economically possible. As stated previously, statewide target reduction for litter of this type would greatly assist with the fulfillment of Clean Water Act mandates, which are currently unmet.

4) **The Resolution should call for a ban of the most harmful plastic materials and/or additives.** We support the Resolution's general call for innovative methods to reduce plastic waste and support packaging alternatives, but urge that the Resolution specify that OPC funds should be directed to the Department of Toxic Substances and Control (DTSC) where toxicity data is lacking and research is necessary. We also encourage the Resolution to specify that in the June 2007 report, the inter-agency task force identify a timetable for a ban of the most toxic packaging offenders. Some of the most abundant items polluting our beaches are also the most toxic (e.g., the most toxic additives include phthalates, bisphenol-A, styrene, perfluorooctanoic acid, vinyl chloride, nonylphenols, and alkylphenols).[10] Data demonstrates expanded polystyrene (e.g. Styrofoam) is a major component of trash; many California cities, including Santa Monica, Berkeley, Ventura, Malibu, Aliso Viejo, San Clemente, have implemented some type of expanded polystyrene ban. Many of these prohibitions were implemented in part to reduce the amount of debris that can enter the marine environment.[11] The European Union has recently undertaken the most ambitious chemical legislation in the world that will restrict the marketing and use of certain "dangerous substances." (REACH, 2006). Many of the plastic additives outlined

[9] Moore *et. al*., (2001) Composition and Distribution of Beach Debris in Orange County, California. 42.3: 241-245.
[10] S. Casey, (November 2006), Our oceans are turning into plastics, are we? *Best Life* : 102-109.
[11] City of Santa Monica Staff Report, Item 7-D, (December 5, 2006); Moore *et. al*., (2001) Composition and Distribution of Beach Debris in Orange County, California. 42.3: 241-245.

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above will likely be included in this restriction. The state should provide commensurate leadership and ban these materials within a reasonable period of time to allow for alternatives to be incorporated into affected products.

5) **The Resolution should call for development of handling requirements <u>and</u> related enforcement regulations for pre-production plastic resin pellets ("nurdles")**. Pre-production resin pellets were by far the most abundant component of marine debris found on Orange County Beaches in the above referenced study. As the Resolution suggests, we agree that best management practices should be required to eliminate the discharge of these pellets into the natural environment during production and transportation (currently, none of the American Plastics Council and the Society of Plastics Industry's voluntary best management practice guidelines are mandated by law.) (e.g., Operation Clean Sweep Pellet Handling Manual). Equally important is the need for significant enforcement penalties to be tied to these practices, so that they are implemented, respected and enforced.

6) **The Resolution should specify how it will expand watershed based cleanups and increase waste receptacles.** Specifically, how will OPC fund and direct these expansions? The OPC should report by date certain on a plan in conjunction with the California Integrated Waste Management Board, the Department of Conservation, and the State Water Resources Control Board.

7) **The Resolution should also set target reductions in the amount of derelict fishing gear found off the California coast**. Moreover, the Resolution should call for the OPC and the state to publicly report on and to coordinate any such efforts with the other coastal states (e.g., Washington, Oregon) and neighboring regions (e.g., Hawaii, British Columbia) that have derelict fishing gear removal programs, including any federally sponsored efforts.

8) **The Resolution should identify specific measures for coordination with the Education and the Environment Initiative (EEI).** Cal/EPA and the California Integrated Waste Management Board (CIWMB) are actively engaged in the implementation of California's Education and the Environment Initiative (EEI) pursuant to AB 1548 (Pavley, Chapter 665, Statutes of 2003) and AB 1721 (Pavley, Chapter 581, Statutes of 2005). The EEI is the nation's most comprehensive program to provide standards-based environmental principles and curricula in all core disciplines (science, history/social science, English/language arts, and mathematics) for all K-12 grade students in public schools. Heal the Bay, a non-profit environmental organization and sponsor of the authorizing legislation, is a partner with the state's leadership team.[12] Other key partners include the Office of the Secretary for Education, State Board of Education, the Department of Education, and

[12] January 17, 2007 Memorandum of Understanding: Heal the Bay, Cal/EPA, and the California Integrated Waste Management Board.

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the California Resources Agency. As the state's nonprofit partner in the EEI, we strongly support the Resolution's general call for promotion and coordination with environmental educational efforts; the EEI leverages the efforts of all state agencies. We would additionally request the OPC allow, for public information purposes, agendized state presentation about the EEI before the June 2007 report date. OPC meetings are an especially relevant forum for solicitation of potential ocean content review experts, and with the curricular writing process already underway, the call for ocean content reviewers is important. Further, we would request that the OPC give guidance for specific items to be reviewed in its recommended June 2007 report, in order to facilitate fulfillment of the EEI's various mandates:

- Recommendations for how the OPC could work with Cal/EPA, the Office of Education and the Environment, and other state partners to assist with an inventory of "environmental education" requirements in any ocean related state permit requirements, enforcement actions, or administrative decisions;
- Recommendations for how the OPC could work with Cal/EPA and the Office of Education and the Environment, and other state partners, to assist in the development of an inventory of K-12 ocean related environmental education programs, including funding source. In past years, a similar request was made through the state legislature, but did not produce a robust and complete data set.

Overall, as the Resolution suggests, many of the possible regulatory mechanisms must be developed by the formation of a complete inter-agency state taskforce. In light of the fact that both Cal/EPA and the Department of Resources Secretaries sit as governing members of the OPC, the OPC is well positioned to convene such inter-agency efforts. We support the formation of a joint committee comprised of the California Integrated Waste Management Board, Department of Conservation, Department of Toxic Substances Control, and the OPC, but would recommend that any such task force also include the Coastal Commission, due to its oversight of statewide beach trash educational efforts and coastal development, and the State Water Resources Control Board, due to its oversight of Clean Water Act regulation of trash reduction of marine debris.

In addition, the OPC should resolve to identify specific ways to support actions by other state agencies to enforce existing anti-litter laws (e.g., Clean Water Act total maximum daily loads for trash), and should resolve to promote fundamental state policy changes to prioritize plastic debris (e.g., the State Water Board's inclusion of prioritization of plastic debris as an amendment to the Ocean Plan.)

Ultimately, the success of an inter-agency task force will depend upon the charge to produce a *quantifiable* reduction in marine debris. The charge to set target reductions is therefore of paramount importance.

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In sum, just as the State has an international leadership role in fighting global warming, so too must California take up the call to arms to protect the sea for future generations. The essence of the California dream is its golden shores. We are littering that dream with refuse that is causing irreparable damage to our marine environment, to our health and to our economy. We urge the OPC to act decisively. The future is now.

Sincerely,

Mark Gold, D. Env
Executive Director
Heal the Bay

Leslie M. Tamminen
Legislative Director
Heal the Bay

Sarah Abramson
Staff Scientist
Heal the Bay

Kirsten James
Staff Scientist
Heal the Bay

cc: Ocean Protection Council members: John Garamendi, Linda Adams, John Chiang, Sheila Kuehl, Pedro Nava; and Drew Bohan, OPC Executive Policy Officer.

February 2, 2007

California Ocean Protection Council
Mike Chrisman, Chair and Members
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653-8102
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Re: February 8, 2007 Marine Debris Resolution

Dear Chair Chrisman and members of the Council:

Plastic trash in our ocean and on our beaches is devastating to ocean wildlife, unhealthy for families that use California's beaches and undermines our coastal tourism economy. As a nonprofit organization focused exclusively on protecting California's air, water and open spaces, Environment California supports your leadership and the actions identified in your Ocean Protection Council (OPC) February 2007 Marine Debris Resolution. Although this resolution is a significant step in the right direction, we urge your Council to take stronger, yet practical actions to set specific and measurable goals, and a timeline to reduce marine debris. Specifically, we ask the OPC to amend your Resolution for action to:

- Set marine debris reduction goals and a timeline for achievement of these goals. Specifically, the Resolution should call for setting target reductions in the amount of plastic fast-food packaging and single-use plastic food packaging, as these are major components of marine debris. The Resolution should also set target reductions in the amount of derelict fishing gear present off the California coast.
- Call for a phased ban of expanded polystyrene (e.g. Styrofoam), a toxic type of plastic, and a major component of marine debris. The Cities of Santa Monica, Ventura, Malibu, Berkeley, San Clemente, and others have already implemented some type of expanded polystyrene ban.
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debris depends upon your Council setting clear, measurable goals for reduction of trash on our beaches and in our oceans.

Our beaches and ocean are a public trust and a legacy, belonging to all Californians. The Ocean Protection Council can provide national leadership to restore the health of this legacy.

Signed,

Dan Jacobson
Legislative Director
Environment California

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January 31, 2007

Mike Chrisman, Chair
California Ocean Protection Council
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Channel Islands National Park's Kelp Forest Monitoring Program

Dear Mr. Chrisman:

I wish to express the California Department of Fish and Game's (Department's) full support of the Channel Islands National Park's Kelp Forest Monitoring Program (KFMP) proposal before the California Ocean Protection Council. The KFMP meets the program priorities of this funding opportunity and the information garnered by the KFMP will greatly assist the Department with recent tasks mandated by the Marine Life Management Act (MLMA) and Marine Life Protection Act (MLPA).

The KFMP is the largest and longest-running monitoring program studying kelp forests in the Southern California Bight. Information from the KFMP has been essential to Department resources management. The KFMP was instrumental in supporting the establishment of MPAs at the Channel Islands and has contributed to other fishery management decisions. The KFMP at Channel Islands National Park is a science-based program and highlights an effective, efficient and successful partnership between regional, state and federal agencies. All information collected by the KFMP is held in public domain and the National Park Service has always been cooperative and has provided information freely and quickly to the Department and other agencies.

Sincerely,

L. Ryan Broddrick
Director

CALIFORNIA ASSOCIATION OF LOCAL CONSERVATION CORPS

PRIVATE NONPROFIT COMMUNITY CONSERVATION CORPS

CONSERVATION CORPS OF LONG BEACH

EAST BAY CONSERVATION CORPS

EOC / FRESNO LOCAL CONSERVATION CORPS

LOS ANGELES CONSERVATION CORPS

MARIN CONSERVATION CORPS

ORANGE COUNTY CONSERVATION CORPS

SACRAMENTO LOCAL CONSERVATION CORPS

SAN FRANCISCO CONSERVATION CORPS

SAN JOSE CONSERVATION CORPS

TULARE CONSERVATION CORPS

URBAN CORPS OF SAN DIEGO

February 4, 2007

Drew Bohan
Executive Policy Officer
California Ocean Protection Council
1416 9th Street, Suite 1311
Sacramento, CA 95814

Dear Mr. Bohan:

On behalf of the California Association of Local Conservation Corps I am writing in support of your proposed resolution on preventing and reducing marine debris. This resolution will contribute towards improvement the state's water quality, protection of our rivers and streams, and preservation of our coastal and marine habitats.

In recent years resources have focused on coastal litter/debris cleanup efforts; but, they have ignored the sources of litter, debris, and pollution. This resolution wisely addresses both treatment and prevention of this pervasive problem.

As you can see from the list on the left, CALCC's members span most of the state, including large stretches of coastal areas. Local Conservation Corps could benefit greatly from the work envisioned by this resolution. Our corpsmembers are predominantly low income people of color. We train and develop these young men and women through the performance of environmental and conservation projects, including recycling, litter clean-up, and environmental education.

If this resolution spurs investment in local corps to perform coastal litter cleanup, education, and prevention efforts, it would expand our ability to not only protect and rehabilitate the natural environment, but hundreds of additional at-risk youth as well. During this time of a slow economic recovery and a failing prison system, additional funding for the Conservation Corps movement is needed now more than ever.

On behalf of CALCC, I strongly encourage you to support this resolution. I would also ask you to consider the role that the certified non-profit local conservation corps can play in protecting some of California's most valuable natural resources: our coast and our youth.

Sincerely,

Scott Dosick
CALCC Secretary

2523 CANTARA WAY
SACRAMENTO, CA
95835

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E-MAIL INFO@CAPITALPATHWAYS.COM
WEB SITE http://www.californialocalconservationcorps.org

February 5, 2007

The Honorable Mike Chrisman,
Chair, California Ocean Protection Council
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

ATTN: Rebecca Pollock, Project Manager

Dear Chairman Chrisman: RE: Marine Debris

In behalf of the California Sea Urchin Commission, I support the approval of the resolution on Marine Debris and we join others in urging the addition of stronger, yet practical actions to reduce marine debris. Specifically, we ask the Council to amend the proposed Resolution to include:

- Specific reduction goals and a time-line to achieve these goals. Specifically, the Resolution should call for setting target reductions in the amount of plastic fast-food packaging and single-use plastic food packaging.

- A recommendation for a phased ban of expanded polystyrene (e.g. Styrofoam), a toxic type of plastic and a major component of marine debris. The Cities of Santa Monica, Ventura, Malibu, Berkeley, San Clemente, and others have already implemented some type of ban on expanded polystyrene.

- A recommendation for regulations to control the release of pre-production plastic resin pellets into the natural environment during production and distribution.

- A call for a reduction of toxic additives (including phthalates, Bisphenol A, and styrene) in disposable plastic items that are frequently found in marine debris.

We urge the Council to provide policy leadership and improve coordination among state agencies to make California the national leader on reducing marine debris. Please amend and approve the resolution on Marine Debris at your meeting on February 8, 2007.

Thank you,

Vern Goehring

Vern Goehring
Executive Director

1621B 13th Street | Sacramento CA | 95814 | tel 916.444.8194 | fax 916.444.8195 | www.calurchin.org

Heal the Bay

1444 9th Street
Santa Monica CA 90401
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February 6, 2007

California Ocean Protection Council
Mike Chrisman, Secretary for Resources and California Ocean Protection Council Chair
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653-8102
COPCpublic@resources.ca.gov

Supplemental Heal the Bay Comments Re:
February 8, 2007 Marine Debris Ocean Protection Council Resolution

Dear Mike Chrisman, Secretary for Resources and California Ocean Protection Council Chair, and Council Members:

In advance of the February 8th 2007 meeting in Santa Monica, California, the Ocean Protection Council (OPC) issued a Resolution calling for identification of the top priority solutions from the June 2006 Plan of Action prepared by the Plastic Debris Project. Heal the Bay, an environmental nonprofit dedicated to making Southern California coastal waters and watersheds safe, healthy and clean, submitted a February 2, 2007 comment letter, and herein submits supplemental comments with proposed language for Amendments to the proposed Ocean Protection Council draft February 8, 2007 Resolution on Marine Debris. As per the reasoning in our previous comments, we suggest the following language be amended into the Resolution:

{1} WHEREAS on September 18, 2006, the West Coast Governor's Agreement (Washington, Oregon and California) on Ocean Health was created to address challenges to the declining health of the shared coastal ocean;

****

{1} RESOLVES that the OPC shall expeditiously work with the Washington Puget Sound Partnership and Ocean Policy Working Group, and the Oregon Ocean Policy Advisory Council, and with British Columbia, Hawaii, and Baja California to, by January 1, 2008, join in creating coast-wide goals for marine debris reduction, with such goals to be achieved within ten years (2018).

- The OPC shall propose to this coalition to set joint litter target reductions of plastic single-use fast-food and convenience market packaging and containers.
- The OPC shall propose to this coalition to set joint derelict fishing gear litter target reductions and site cleanup targets.
- The OPC shall also propose to this coalition to consider relevant European Union chemical legislation restricting the marketing and use of harmful plastic materials and/or

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additives, including specifically phthalates, bisphenol-A, styrene, perfluorooctanoic acid, vinyl chloride, nonylphenols, and alkylphenols.

- The OPC shall propose to this coalition to jointly address handling requirements and related enforcement regulations for pre-production plastic resin pellets ("nurdles").
- The OPC shall report to the public on progress of the formation of the Ocean Coalition at its next OPC meeting.

{2} RESOLVES to create, by October 2007, an inter-agency task force to implement the recommendations of this Resolution.

- The inter-agency task force shall include, but not be limited to, representation of the California Integrated Waste Management Board, Department of Conservation, Department of Toxic Substances Control, Coastal Commission, the State Water Resources Control Board, and be chaired by the Ocean Protection Counsel.
- The task force shall publicly report at every OPC meeting after it is ordained.

{3} RESOLVES to expeditiously work with state agencies to author, by October 2007, a plan for implementing California Redemption Value (CRV) expansion and increase of processing fees, with such plan to be achieved within eight years (2015).

{4} RESOLVES to expeditiously work with state agencies to author, by October 2007, a statewide implementation plan with target reductions of plastic single-use fast-food and convenience market packaging and containers, with such plan to be achieved within eight years (2015).

{5} RESOLVES to expeditiously work with state agencies to author, by October 2007, a plan for derelict fishing gear target reductions and site cleanup targets, with such plan to be achieved within eight years (2015).

{6} RESOLVES to expeditiously work with state agencies to author, by October 2007, a phased ban of the most toxic plastic packaging offenders. Such plan shall address toxics, including, but not limited to, styrene (e.g., Styrofoam), bisphenol-A, perfluorooctanoic acid, vinyl chloride, nonylphenols, and alkylphenols, with such plan to be achieved within eight years (2015).

{7} RESOLVES to expeditiously work with state agencies to author, by October 2007, a plan for handling and transport regulation and related enforcement of pre-production plastic resin pellets ("nurdles"), with such plan to be achieved within two years (2009).

{8} RESOLVES by April 2007, the OPC shall identify and publicly report on OPC/Resources Agency funds, if any, to be directed to the Department of Toxic Substances and Control (DTSC) for marine debris toxicity data and research.

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{9} RESOLVES to agendize, for public information purposes, a state presentation about the EEI at the next upcoming OPC meeting.

{10} RESOLVES that the June 2007 OPC report incorporate:

- Recommendations for how the OPC could work with Cal/EPA, the Office of Education and the Environment, and other state partners to assist with an inventory of "environmental education" requirements in any ocean related state permit requirements, enforcement actions, or administrative decisions;
- Recommendations for how the OPC could work with Cal/EPA and the Office of Education and the Environment, and other state partners, to assist in the development of an inventory of K-12 ocean related environmental education programs, including funding source.

{11} RESOLVES to support actions by other state agencies to enforce existing anti-litter laws (e.g., Highway anti-litter laws, Clean Water Act total maximum daily loads for trash), and to promote fundamental state policy changes to prioritize plastic debris (e.g., the State Water Board's inclusion of prioritization of plastic debris as an amendment to the Ocean Plan.)

Pollock

LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

ARNOLD SCHWARZENEGGER
GOVERNOR

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February 6, 2007

Secretary Mike Chrisman, Chair
State Coastal Conservancy
1330 Broadway, 13th Floor
Oakland, California 94612

Dear Secretary Chrisman:

The California Integrated Waste Management Board (Board) is pleased to support the California Ocean Protection Council's proposed resolution to reduce and prevent plastic marine debris. We continue to support statewide efforts to minimize the harmful effects of litter on our land, water and air environments.

Board staff was excited to assist in the Ocean Protection Council's effort that has led to this resolution. Our staff has participated on the Project Advisory Board, the Marine Debris Work Group, and the Steering Committee with the *Plastic Debris, Rivers to Sea Project.*

We applaud the Council's identification of six priority solutions within the resolution and we believe that our Board's mission to reduce, reuse and recycle all waste materials aligns with all of these proposed priorities. We look forward to exploring opportunities to work collaboratively with the Ocean Protection Council to implement these solutions.

Sincerely,

Margo Reid Brown

Margo Reid Brown, Chair
California Integrated Waste Management Board

INTEGRATED WASTE MANAGEMENT BOARD

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NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Fisheries Science Center
2570 Dole St. • Honolulu, Hawaii 96822-2396
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February 6, 2007

California Ocean Protection Council
Mike Chrisman, Secretary for Resources and California Ocean Protection Council Chair
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: February 8, 2007 Marine Debris Ocean Protection Council Resolution

Dear Mike Chrisman, Secretary for Resources and California Ocean Protection Council Chair, and Council Members:

As a NOAA Fisheries Biologist and concerned California citizen, I write this letter in support of the many actions identified in the June 2006 Plan of Action, and I encourage you to further strengthen the Resolution specifically in regards to reduction of marine debris.

It remains an uncontested fact that marine debris alters and negatively impacts the marine environment in a variety of ways, and there are essentially no boundaries to the geographic and ecologic destruction of this unnecessary threat. I have spent the bulk of my career working in the Hawaiian Islands on sea turtles and pelagic fisheries related issues. I have truly been to the far corners of the world, but it's unlikely that I was ever in a place free of debris. All green sea turtle residents foraging in the main Hawaiian Islands make their migration to the Northwestern Hawaiian Islands (NWHI) in order to breed and nest. Despite the fact that these islands are over 1,000 miles from the closest city, the atolls are strewn with plastics and derelict fishing gear, which have been shown to kill or cause harm to many members of the protected residents, including sea birds, sea turtles, and monk seals.

While the animals in these protected ecosystems have now been isolated from the pressures of fishing and other commercial activities, they are unfortunately not immune from the effects of marine debris, or floating trash, which often includes discarded fishing gear and plastics. It's been estimated that 85 - 90% ocean's debris are comprised of plastics, which often persist in the marine environment for many years due to the slow breakdown process of many types of plastics. During the voyage of our trash in the oceans, plastic bags and other items are often mistaken for food items, such as gelatinous organisms, and are erroneously ingested by marine turtles and marine mammals, often resulting in death. NOAA and other environmental agencies believe that plastics pose a significant threat to the marine environment, especially as they have

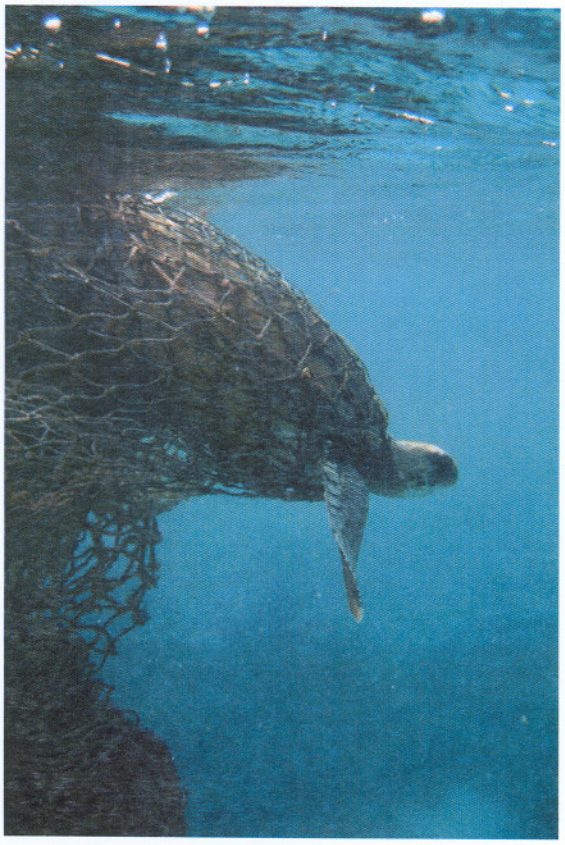
the ability to undermine great accomplishments such as the designation of large expanses of ocean as marine protected areas.

I include for your interest photos of images whereby marine debris has washed up on remote beaches, thereby reducing the availability of suitable nesting sites for endangered sea turtles, and also images of sea turtles directly impacted by the marine debris. I urge your Council to take all the steps necessary to reduce the introduction of marine debris into the environment. If you have further questions, I can be reached at (310) 450-7470 or Yonat.swimmer@noaa.gov.

Sincerely,

Yonat Swimmer, Ph.D.

Trash on highest density nesting beach for loggerhead sea turtles in Bahia, Brazil.



Green sea turtle caught in derelict fishing gear in Northwestern Hawaiian Islands.

Plastic trash accumulates near sea turtle feeding area in Greece.

Sea turtle strangulated by derelict fishing gear.

Plastics accumulate on remote beaches in the Hawaiian Islands.

Bags of trash collected from sea turtle biologists on sea turtle nesting beaches in Brazil.

California Coastal Coalition
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STEVEN ACETI, J.D.
Executive Director

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February 7, 2007

Secretary for Resources Mike Chrisman, Chair
California Ocean Protection Council
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Resolution on Preventing and Reducing Marine Debris

Dear Secretary Chrisman,

On behalf of its local and regional government members, the California Coastal Coalition (CalCoast) wishes to express its gratitude to the Ocean Protection Council (OPC), and the various state entities it has collaborated with, for investigating ways to prevent and reduce marine debris and litter.

As noted in the staff memorandum in support of the draft resolution, marine debris and litter is becoming a serious threat to the health of California's beaches, watersheds and ocean environment. Litter is a statewide challenge, but coastal cities and counties are bearing the brunt of the problem and associated costs because trash that is disposed of improperly inland, as well as along the coast, flows into their communities with each rainfall. Each year, coastal communities are having to spend a greater percentage of their general funds on marine debris and litter abatement and efforts to impose clean water fees to help reduce the drain on local finances has met with continued resistance from taxpayer rights advocates.

There is a serious need for a strong, comprehensive effort by the state to educate the public about the proper disposal of litter, as well as programs that will help local governments along the state's watersheds to include litter abatement in clean water programs that are already strained by a lack of state funds.

New initiatives like the state's "Don't Trash California" are a good start, but these programs are severely under-funded in relation to the nature and scope – geographically and otherwise - of the litter problem facing the state. The state's media campaign should be increased substantially and on par with other large coastal states, such as Texas. Cities and counties need funding to replace old, open-air trash receptacles with newer models that encourage recycling and prevent litter from spreading via wind, shorebirds, and human foraging. In addition, coastal communities require more funding for the installation and maintenance and maintenance of storm drain filters, which trap debris before it reaches the shore.

The staff report on this issue mentions the possibility of broadening the scope of the CRV program, however, a recent article in the Los Angeles Times (http://www.latimes.com/news/local/la-me-recycling4feb04,1,489913.story?page=1&coll=la-headlines-california) noted some serious conerns about the way the current CRV is being administered. According to the article, millions of dollars that could have been sued to fund marine and debris letter programs were wasted in a number of ways.

The staff report cites studies and other efforts undertaken recently by the Coastal Commission, Integrated Waste Management Board and Caltrans, to name a few, nut none of these agencies or boards have devoted the funds necessary to follow-through with the recommendations made by these entities.

We agree with the staff report's conclusion that marine debris is a serious and increasing problem that needs attention, but we do not think it is useful or fair to categorize "some trash is better than others" or to study the problem any further without a serious commitment of funds necessary to assist local government and NGO's to deal with the problem. In terms of funding, the state should seek public/private partnerships with the plastics industry and there are already good models for that at the local and regional level. The County of Orange and the city of Los Angeles have established marine debris task forces that meet on a regular basis and corporations, such as Pactiv and Hilex, have been willing and active industry partners. Both task forces have industry and NGO members and the city of Los Angeles has gone so far as to create a public/private non-profit foundation to help the city work on a trash TMDL for the Los Angeles River.

In conclusion, marine trash and debris is a serious problem that will never be solved without a strong, statewide public relations campaign about the proper disposal of trash and sufficient funding, possibly in partnership with the plastics industry, for local governments along the coast to deal with a problem that arrives on their doorstep with every rainfall.

We commend the OPC and its state government partners for making the problem/challenge of marine debris and trash the focus of its meeting tomorrow and we look forward to working with the OPC, the Coastal Commission, the State Water Resources Control Board, Caltrans and the Integrated Waste Management Board on solutions that will preserve California's important coast and ocean resources.

Sincerely,

Steven Aceti, J.D.
Executive Director

Surfrider Foundation

Thursday, February 8, 2007

Secretary Chrisman and Council Members,

Welcome to Santa Monica and thank you for the opportunity to address you today. My name is Nancy Hastings and I am the Southern California Coordinator for Surfrider Foundation.

I want to briefly touch on the recent decision by the federal court on the use of cooling water intakes at our coastal power plants – and the broader implications of that ruling.

We have 2 interrelated requests that we believe are consistent with your mission: First, We'd like to see the Ocean Protection Council encourage the State Water Board to make their guidance document on 316(b) a priority. Finishing this draft, consistent with the federal court ruling, will help guide the State to an immediate and efficient transition away from "once through cooling."

Second, we'd like the Ocean Protection Council to draft a resolution to all relevant state agencies that the decision by the federal court should set statewide policy on ALL open ocean intakes. It would undermine the intent of the Clean Water Act's section 316(b), as well as the Governor's focus on restoring our ocean's living resources, to disallow open ocean intakes for coastal generators, only to have the marine life destruction replaced by other industries. Just like power plants – desalination, LNG and other industries have readily available alternatives to open ocean intakes. These non-destructive environmentally preferred alternatives should be the mandate of every industry – not just our coastal generators.

We hope to provide you with a more detailed comment letter in the near future. But we wanted to take this opportunity to put this critical issue on your radar screen. We believe the unfortunate era of unnecessarily destructive open ocean intakes is at an end. We know now -- all too well – that marine life is not as abundant and resilient as we once thought. Our fishing communities and the future of healthy marine ecosystems will take some time to rebuild. The time to eliminate unnecessary impediments to that rebuilding is TODAY.

Read by Nancy Hastings on behalf of:
Joe Geever,
Southern CA Regional Manager
jgeever@surfrider.org

February 8, 2007

Mike Chrisman, Chair and Members
California Ocean Protection Council
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: February 8, 2006 OPC Meeting, Agenda Item 12: Once-Through Cooling Systems for Coastal Power Plants: Impacts of Riverkeeper, Inc., *et al*. v. U.S. Environmental Protection Agency, No. 04-6692-ag(L) (2nd Cir. Jan. 25, 2007)

VIA EMAIL: COPCpublic@resources.ca.gov

Dear Chair Chrisman and Members of the Council:

The undersigned groups, who represent hundreds of thousands of Californians, including the working men and women of California's fishing industry, thank the Ocean Protection Council for its continued leadership role in the development of a clear and consistent statewide policy to protect marine resources from the devastating effects of once-through cooling (OTC) used in coastal and bay-side power plants. The Council's prescient action on this issue was more than validated two weeks ago, when the Second Circuit U.S. Court of Appeals ruled on the legality U.S. Environmental Protection Agency's once-through cooling regulations for existing power plants. The Court found the regulations violated the Clean Water Act by failing to require the "best technology available" for cooling water intake structures at existing plants. Riverkeeper, Inc., *et al*. v. U.S. Environmental Protection Agency, No. 04-6692-ag(L) (2nd Cir. Jan. 25, 2007).[1] A legal article evaluating this decision is attached.

This decision was a major victory for the public,[2] including the six states that also challenged the rule.[3] The Court found that EPA misinterpreted and exceeded the statutory authority granted by Congress under Section 316(b) of the Clean Water Act when it issued its "Phase II" cooling water rule, and made the following key findings (among others):

1) Contrary to EPA's claims, the Court found that Clean Water Act section 316(b) prohibits EPA from basing its regulatory decisions on cost-benefit analysis, and emphasized that the law requires application of the "*best*" technology that can be "reasonably borne" by the industry. (Emphasis in original.)

2) The Court found that if EPA chooses to establish performance standards (including performance ranges), rather than requiring particular technologies, it must require plants to implement the technology that achieves "as much reduction of adverse environmental impacts as is technologically possible." Specifically, the Court said "[t]he statutory directive requiring facilities to adopt the *best* technology cannot be construed to permit a facility to take measures that produce second best results . . . especially given the technology-forcing imperative of the Act." (Emphasis in original.)

3) The Court found – just as it had in 2004 when it addressed EPA's Phase I cooling water rule for new

[1] A copy of the decision can be found at www.cacoastkeeper.org.
[2] Plaintiffs were Riverkeeper, Inc., Natural Resources Defense Council, Waterkeeper Alliance, Soundkeeper, Inc., Scenic Hudson, Inc., Save The Bay—People For Narragansett Bay, Friends of Casco Bay, American Littoral Society, Delaware Riverkeeper Network, Hackensack Riverkeeper, Inc., New York/New Jersey Baykeeper, Santa Monica Baykeeper, San Diego Baykeeper, California Coastkeeper Alliance, Columbia Riverkeeper, Conservation Law Foundation, and Surfrider Foundation.
[3] New York, New Jersey, Rhode Island, Massachusetts, Connecticut and Delaware challenged the rule.

facilities – that "restoration measures contradict the plain language of section 316(b)." The Court found in particular that "after-the-fact compensation for adverse environmental impacts that have already occurred" using restoration, rather than "minimization of those impacts in the first instance," is "in contravention of the Act's clear language as well as its technology-forcing principle."

Given the significance of these and other findings, and the clear direction the Court gave to EPA, we urge the Ocean Protection Council to review this major decision and incorporate its findings and direction into the Council's ongoing once-through cooling studies as soon as possible. In addition, we urge the Council to work with all affected agencies – including but not limited to the State Water Resources Control Board, California Energy Commission, and the California Coastal Commission – to ensure that their developing and existing policies, permits, leases, grants and regulations fully reflect the directives of the Court.

We again thank the Council for its strong and continued support for protecting the state's resources from the extremely harmful effects of once-through cooling systems. Coastal power plants can and should bring their operations in line with the many inland power facilities that have been using alternative cooling technologies for years. We look forward to continuing to work with you to ensuring full compliance with all laws affecting once-through cooling. Thank you.

Respectfully,

Linda Sheehan, Executive Director
California Coastkeeper Alliance
lsheehan@cacoastkeeper.org

William F. "Zeke" Grader, Executive Director
Pacific Coast Federation of Fishermen's Asso.s
zgrader@ifrfish.org

David Beckman, Senior Attorney
& Director, Coastal Water Quality Project
NRDC
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Joe Geever, Southern Cal. Regional Manager
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Santa Monica Baykeeper
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Alan Ramo, Director
Golden Gate University School of Law
on behalf of Bayview Hunters Point Community Advocates and Communities for a Better Env't
aramo@ggu.edu

Bruce Reznik, Executive Director
San Diego Coastkeeper
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Rory Cox, California Program Director
Pacific Environment
rcox@pacificenvironment.org

Jack McCurdy, Co-President
California Alliance on Plant Expansion
jackmccurdy@suddenlink.net

ATTACHMENT

2nd Circuit Orders EPA to Redo Water Rules

Mark Hamblett
New York Law Journal
01-31-2007
www.law.com/ca

NEW YORK — Several aspects of a federal rule governing cooling water intake structures at power plants throughout the country are inconsistent with the Clean Water Act, the Second Circuit U.S. Court of Appeals has ruled.

The circuit handed environmentalists nearly a complete victory last week as it also found that aspects of the rule were "not supported by sufficient evidence" nor were subject to adequate notice and comment.

Thus, it remanded the rules to the Environmental Protection Agency for further consideration.

The ruling in Riverkeeper Inc. v. United States Environmental Protection Agency, lead docket 04-6692-ag, dealt with several challenges to the federal rule, which environmentalists say does far too little to protect aquatic life around power plants. They argue that the use of enormous amounts of water to cool the plants leads to the demise of aquatic wildlife either through trapping and killing or overheating the water.

Excerpts from the decision will be published Thursday.

The decision was issued by Judges Chester Straub, Sonia Sotomayor and Peter Hall, with Judge Sotomayor writing for the court.

Riverkeeper, the Natural Resources Defense Council and a host of other groups challenged the rule that was passed by the Environmental Protection Agency pursuant to §316(b) of the Clean Water Act, 33 U.S.C. §1326(b).

The rule was intended to protect fish, shellfish and other fresh and saltwater organisms from being harmed or killed in cooling water intake structures.

In what is now called Riverkeeper I, (Riverkeeper, Inc. v. EPA), 358 F.3d 174 (2004), the circuit dealt with challenges to new power plants. It found that the EPA impermissibly exceeded its authority by allowing new facilities to use restoration measures to comply with regulations implementing the statute.

Thursday's decision dealt instead with existing power plants and facilities, which under §316(b) Congress required to use the "best technology available for minimizing adverse environmental impact."

The final version of the rule issued July 9, 2004, established five different methods of complying with the congressional mandate.

The environmentalists claimed the EPA exceeded its authority by rejecting "closed-cycle cooling" as the best technology available and by setting ranges of acceptable performance instead of a single numeric standard.

Among other arguments, they said the Clean Water Act does not allow compliance by restoration and was wrong to allow site-specific determinations of the best technology based on a cost-benefit analysis.

The EPA also was challenged from the other side of the issue as three "industry" petitioners, including Entergy Corp., made several objections, including arguing that §316(b) does not apply to existing facilities and that the EPA's definition of "adverse environmental impact" is unsupported by the record.

'BEST TECHNOLOGY AVAILABLE'

The most significant challenge, Judge Sotomayor said, was the environmentalists' claim that the "EPA exceeded its authority in rejecting closed-cycle cooling and selecting instead a suite of technologies, as the 'best technology available' as required by 316(b), in large part because the agency engaged in improper cost considerations."

The court was persuaded by the environmentalists' position that restoring damage already done to wildlife was an unacceptable form of compliance with the statute.

— Peter Zeughauser

She said that in Riverkeeper I the court ruled "the EPA can consider cost in establishing the (best technology available) but only in a limited fashion and not as a primary consideration" — in other words it can determine what technology can be "reasonably borne" by the industry and it can "engage in cost-effectiveness analysis in determining" the best technology available.

So the statute "permits cost-effectiveness considerations to influence the choice among technologies whose performance does not essentially differ from the performance of the best-performing technology whose costs the industry reasonably can bear," but the statute "does not permit the EPA to choose (the best technology available) on the basis of cost-benefit analysis," she said.

Because the record was unclear, the court remanded for "clarification of the basis for the agency's decision and potentially for a reassessment" of the best technology available.

The judge also said that EPA's rejection of the closed-cycle recirculating system and its decision to adopt a suite of technologies was poorly explained and this failure "frustrated effective judicial review."

The court was persuaded by the environmentalists' position that restoring damage already done to wildlife was an unacceptable form of compliance with the statute.

It found that the "EPA should have afforded notice and an opportunity to challenge the cost estimates of specific facilities and not simply an opportunity to comment on the EPA's methodology and general cost data."

And, it said, "the EPA exceeded its authority under §316(b) by permitting (1) cost-benefit analysis and (2) assessment of the quality of the receiving water (i.e., the receiving water's wildlife levels) in determining whether a variance is warranted."

On one of the industry petitioners' arguments, the court said the EPA was correct in finding that §316(b) applies to existing facilities.

It also rejected a challenge to the EPA's interpretation of its mandate to minimize "adverse environmental impact."

One industry petitioner, PSEG Fossil, had argued that the EPA had changed course and now viewed any loss or harm to aquatic organisms as amounting to an adverse impact.

But Judge Sotomayor said the court made clear in Riverkeeper I that "the EPA's focus on the number of organisms killed or injured by cooling water intake structures is eminently reasonable."

Reed Super of the Environmental Law Clinic at Columbia Law School, who argued for the environmental petitioners, said the rejection of cost-benefit analysis was critical. Cost-benefit analysis was only allowed on a phase-in basis after the passage of the Clean Water Act, he said, but has been off the table since 1989.

"It is enormously difficult to put a dollar value on protecting ... the environment," Super said. "Congress was well aware of that and also aware of the difficulty of even trying to quantify that and fully understand the effects of pollution on killing wildlife and otherwise upsetting aquatic eco-systems."

Tricia Jedele, special assistant attorney general of Rhode Island, argued for Rhode Island, New York and four other states during three hours of argument before the panel on June 8, 2006.

Kristy Bulleit of Hunton & Williams, Karl Lytz of Watham & Watkins, and Chuck Barlow and Elise Zoli of Goodwin Procter argued for the industry petitioners.

David Gualtieri, Cynthia Morris and Jessica O'Donnell argued for the EPA.

Mark Hamblett is a reporter with the New York Law Journal, Journal, a Recorder affiliate.