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Bob Perciasepe, Acting Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460
perciasepe.bob@epa.gov

Dennis McLerran, Regional Administrator
EPA - Region 10
1200 6th Ave., Suite 900
Seattle, WA 98101
mclerran.dennis@epamail.epa.gov

Re: Request for reconsideration of approval of Washington and Oregon's impaired waters lists and courtesy notice of intent to sue

On behalf of the Center for Biological Diversity, we urge the Environmental Protection Agency (EPA) to reconsider its decisions approving Washington and Oregon's lists of impaired waters because of the urgent threat of ocean acidification. Ocean acidification is a critical threat to marine diversity, fisheries, and the communities that depend on the sea. The Pacific Northwest is particularly vulnerable to ocean acidification, which is already having adverse effects on the region's productive marine ecosystem. Marine organisms in the surface waters are being exposed to corrosive waters along the Pacific Coast, and the massive oyster die-offs in Washington and Oregon signal a serious water quality problem. Accordingly, coastal waters in Washington and Oregon are failing to attain water quality standards and should have been included on the states' impaired waters lists as required by section 303(d) of the Clean Water Act. 33 U.S.C. § 1313(d).

EPA has an important duty to protect water quality through the Clean Water Act. The goal of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. 33 U.S.C. § 1251(a). Section 303(d) requires states to identify all waters that are not attaining water quality standards on a list of impaired waters. *Id.* § 1313(d). EPA provides oversight and may only approve the list if it meets the requirements of the Clean Water Act. *Id.* Through section 303(d), the states and EPA address water quality problems from broad sources and identify waters that need management actions.

EPA has eschewed its authority and duty to implement the Clean Water Act to protect our nation's waters from ocean acidification. EPA must act now because significant information establishes that ocean acidification is impairing waters in the Pacific Northwest. For example, beginning in the mid-2000s oyster hatcheries in Washington and Oregon experienced devastating declines in oyster production because of ocean acidification. At the same time, natural-set oysters in Willapa Bay also failed to reproduce. Monitoring and surveys of Pacific waters show that acidified, corrosive waters upwell onto the continental shelf and reach surface waters. An extensive body of scientific evidence shows that ocean acidification negatively affects nearly

every type of marine animal, causing problems with calcification, reproduction, growth, survival, and metabolism. The Center for Biological Diversity submitted ample information concerning ocean acidification and its impacts to Washington and Oregon's waters for the states' water quality assessments. Added together, the information and data about the chemical and biological impacts of ocean acidification on the marine waters of Washington and Oregon establish violations of the applicable water quality standards. Aquatic life and shellfish uses are being adversely affected by ocean acidification, and consequently marine waters must be identified as threatened or impaired by acidification.

Despite the serious threat that ocean acidification poses to marine life, Washington and Oregon declined to identify any waters as threatened or impaired by ocean acidification on their 2010 section 303(d) lists. On December 21, 2012, EPA approved Washington's deficient list, and on December 14, 2012 it took final action on Oregon's list. For Washington, EPA concluded that the state had met all the statutory and regulatory requirements under the Clean Water Act in excluding waters affected by ocean acidification. For Oregon, EPA determined that evidence was insufficient to warrant listing. EPA's approval of Washington and Oregon's lists without any waterbodies identified as threatened or impaired by ocean acidification is arbitrary and capricious and in violation of the Clean Water Act, 33 U.S.C. § 1313(d), and Administrative Procedure Act, 5 U.S.C. § 706(2). Accordingly, EPA should take immediate steps to reconsider its decisions.

There are many benefits of using EPA's authority under the Clean Water Act to address ocean acidification. Identifying waters impaired by ocean acidification will not only focus management and monitoring efforts, but it can also provide steps for reducing carbon dioxide emissions that are causing acidification. If listed, impaired waters are afforded new rules that help protect the waters by identifying pollution sources and total maximum daily loads of pollutants. Section 303(d) was intended to address pollution problems that come from broad or difficult to identify sources, and indeed it has already been used to address such diffuse sources as atmospheric mercury deposition and acid rain. Accordingly, the Clean Water Act could ultimately abate regional and national sources of ocean acidification.

We applaud the pioneering effort of the Washington Blue Ribbon Panel on ocean acidification, and its recommendations for action should be fully implemented. Washington's implementation of recommendations of its 2008 Climate Action Team and Governor Inslee's leadership on climate change are also commendable. Indeed, Washington is taking steps to address ocean acidification because it has a large stake in addressing this problem. Oregon is also ahead of many other states in addressing carbon dioxide emissions through its Global Warming Commission and 2020 Roadmap. Further, EPA's steps on ocean acidification deserve recognition – including its participation on the Interagency Working Group on Ocean Acidification, its commitment to form a work group to consider new water quality criteria for ocean acidification, and its 2010 memo confirming that states should list waters failing to meet water quality standards as a result of ocean acidification.

While these steps by Washington, Oregon, and EPA are praiseworthy, the problem of ocean acidification remains unsolved and is growing more severe. Urgent actions to address ocean acidification are needed on all fronts. Full implementation of the Clean Water Act to address

ocean acidification through impaired waters listings and total maximum daily loads is one among many measures needed to reduce carbon dioxide pollution. Using the Clean Water Act to address ocean acidification complements efforts to reduce carbon dioxide emissions under the Clean Air Act and state initiatives. We must use all mechanisms to curb ocean acidification and protect our marine ecosystems from collapse.

We implore the agency to reconsider its decisions to approve Washington and Oregon's impaired waters lists with respect to ocean acidification. If the agency fails to promptly to reconsider its approvals, the Center will seek a judicial remedy challenging the agency's decisionmaking. Although a formal notice of intent to sue is not required for these claims, we are providing this letter as a courtesy to encourage EPA to act promptly to address this concern. We welcome a meeting anytime with EPA, Washington, or Oregon to discuss how to address ocean acidification under the Clean Water Act. Please contact us if you have any questions regarding this letter.

Thank you very much for your time and consideration of this matter.

Sincerely,



Miyoko Sakashita
Oceans Director, Senior Attorney
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA 94104
miyoko@biologicaldiversity.org
(415) 632-5308
*Counsel for the Center for Biological
Diversity*



William J. Snape, III
Senior Counsel
Center for Biological Diversity
Washington, DC
bsnape@biologicaldiversity.org
(202) 536-9351

cc:

Jay Inslee, Governor of Washington
PO Box 40002
Olympia, WA 98504-0002

John Kitzhaber, Governor of Oregon
160 State Capitol
900 Court Street
Salem, Oregon 97301-4047

Maia D. Bellon, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
maib461@ecy.wa.gov

Dick Pedersen
Oregon Department of
Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204-1390
pedersen.dick@deq.state.or.us

Eric Holder
US Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001