



December 13, 2019

Mr. Wade Crowfoot, Secretary
California Natural Resources Agency
Ocean Protection Council
1416 9th Street, Suite 1311
Sacramento, CA 95814

Via email to: COPCpublic@resources.ca.gov

Re: **Ocean Protection Council 2020-2025 Strategic Plan to Protect California’s Coast and Ocean**

Dear Secretary Crowfoot:

Our organizations appreciate the opportunity to provide comments on the Ocean Protection Council (OPC) draft 2020-2025 Strategic Plan to Protect California’s Coast and Ocean (Plan). Collectively, our organizations represent thousands of businesses and public agencies throughout the state that help drive California’s economy. We share the OPC’s mission in maintaining healthy, resilient, and productive ocean and coastal ecosystems for the benefit of current and future generations, while at the same time balancing the need to sustain California’s vibrant economy.

After reviewing the draft Plan, our organizations have identified a fundamental issue with the structure and content of the draft Plan that has raised serious concerns regarding all targets and action items. The function of the OPC as outlined in the California Ocean Protection Act (Act) is to coordinate activities among state agencies related to the protection and conservation of coastal waters and ocean ecosystems, aid in the collection, sharing and analyses of scientific data, identify and recommend changes in law to the Legislature to further advance the goals of the Act, and provide grants to agencies and non-profit organizations to support the collection and sharing of scientific data (see Cal. Pub. Res. Code § 35615 and § 35621).

To that end, our organizations are concerned that the draft Plan goes well beyond the “coordinating” and “advisory” responsibilities outlined in the Act by improperly delegating the OPC with authority to create and implement regulations. For example, Target 3.4.2 focuses on the goal of achieving zero trash from entering the state’s waterways based on the recently approved State Water Resources Control Board (SWRCB) trash amendments. However, Target 3.4.2 goes on to state than one action item would be the

adoption of a resolution to ban expanded polystyrene in food serviceware and packaging by 2020 and to implement the ban by 2022. Pursuant to Section 35615 of the Public Resources Code, we find no statutory authority for OPC to “implement a ban.” Accordingly, we request that all references in the draft Plan that directly or otherwise infer the OPC has authority to create and implement regulations be deleted. A statement from the OPC clarifying the scope and nature of the commission’s authority should be included in the subsequent draft Plan to avoid further confusion.

Our organizations also note that the draft Plan does not consider the economic impacts for any targets or action items. As an advisory body to the Legislature, the OPC should include in its draft Plan all relevant information analyzing the economic, social and regulatory issues to achieving any proposed targets or action items (see Cal. Pub. Res. Code 35510(b) and 35550(e)(2)). Further, while we recognize the need to identify priority issues, the OPC five-year strategic planning document should be internally consistent by ensuring that all targets include a relevant action item(s) -- numerous target items do not. This will better inform the Legislature, other relevant state agencies and the public with what the OPC is considering and proposing.

As it relates to specific targets and action items of concern to our organizations, we have highlighted several of them as examples of our broader concerns with the draft Plan.

Target 1.2.3: Establish a target date for phasing out coastal sewage discharge into the ocean by 2022. Work with partners to achieve 80-100% coastal wastewater recycling by 2040.

Since there are no action items associated with this target, it is unclear whether or not this issue will be consistent with the SWRCB’s recently adopted Recycled Water Policy. Notably, California’s Regional Water Quality Control Boards already have the authority to regulate coastal wastewater discharges. If discharges are already heavily regulated and must be treated to meet water quality standards already established by the regional water boards, what is Target 1.2.3 attempting to achieve that the SWRCB’s existing authority fails to provide? Similarly, and as it relates to the target of achieving 80-100% coastal wastewater recycling by 2040, it is unclear if statutory changes will be necessary to assist public agencies achieve this goal, not to mention the costs to try and attain such a goal. If the OPC is considering or proposing statutory changes, the draft Plan should explicitly state so in an action item.

Target Item 3.4.2: With partners, work to achieve zero trash entering state waters by 2030.

As previously discussed, two of the action items associated with this target should be deleted from the draft Plan. Those action items are: 1) Adopt an OPC Resolution to ban expanded polystyrene in food serviceware and packaging by 2020; ban implemented by 2020; and 2) Work to change state purchasing and service contracts to require reusable food serviceware whenever feasible and reduce the state’s reliance on single-use food serviceware by 2021. As it relates to action item 1, the issue of “implementation” as previously stated is a major concern. We emphasize that the OPC lacks statutory authority to adopt or implement regulations and serves as an advisory council. In addition, we believe action item 1 is not consistent with Target 3.4.2 since it states that action should be consistent with the trash policy and amendment adopted by the SWRCB. The SWRCB policy allows for municipalities to achieve compliance through the installation of full capture trash systems or through the implementation of a combination of structural and institutional measures. As for action item 2, CalRecycle has started the process of developing regulations for SB 1335 (Allen-D; Chapter 610) – the Sustainable Packaging for the State of California Act of 2018. An expanded polystyrene product ban and changes to the state’s purchasing and service contracts is premature considering current regulatory rulemaking process.

Target Item 4.5.1: Decarbonize Ports and Shipping.

Our organizations request that the draft Plan provide more information as to what factors will be considered in determining when and how California’s ports will be decarbonized. The issue is critical for our members and decarbonizing California ports was not part of OPC’s March 2019 draft plan. In addition, it is unclear whether any decarbonization advancements made to date by the shipping industry will be considered since there are no “Actions” identified with this objective.

We thank you for considering our comments. Please contact us with any questions or comments.

Sincerely,



Adam Regele, Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

AP Moller – Maersk
Agricultural Council of California
American Chemistry Council
Auto Care Association
CAWA – Representing the Automotive Parts Industry
California Association of Port Authorities
California Building Industry Association
California Business Properties Association
California Construction and Industrial Materials Association
California Farm Bureau Federation
California League of Food Producers
California Manufacturers & Technology Association
California Railroads
California Restaurant Association
Chemical Industry Council of California
Dart Container Corporation
Grocery Manufacturers Association
Household & Commercial Products Association
Western Growers Association
Western Plastics Association