



**TESTIMONY OF ANN NOTTHOFF  
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**BEFORE THE U.S. COMMISSION ON OCEAN POLICY  
“COASTAL AND OCEAN MANAGEMENT CHALLENGES”**

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Good afternoon and welcome to California. My name is Ann Notthoff. I am the California Advocacy Director for the Natural Resources Defense Council (NRDC), a national non-profit environmental law and policy organization. I work in our San Francisco and Sacramento offices, representing NRDC on issues of statewide concern. Since 1978 my work has centered on coastal management and ocean protection, including coastal zone management, offshore oil and gas, marine ecosystem protection, coastal water quality and ocean governance. As you may be aware, NRDC's president John Adams is a member of the Pew Ocean Commission and I have had a chance to participate in many of the discussions they are having about these issues of concern to us all. We met in Monterey earlier this year where I was able to exchange perspectives with commissioners Rosenberg and Ruckleshaus.

It is a hopeful sign to those of us in the environmental community to have the Commission here on the Pacific Coast this week because it is here that many coastal and ocean protection programs got their first start – programs that were then adopted in other regions or at the federal level. It is also here that many of the conflicts over coastal and ocean management are most stark – competing demands driven by the mounting population pressure drives home the need for bold leadership. As the fifth largest economy in the world and with a finite coastline of 1,100 miles, California, in particular, faces tough resource management decisions. Yet by working with alliances of interests, and with leadership, significant progress has been made on some thorny issues.

Just to bring some of this home, there are many who point to the 1969 Santa Barbara oil spill, just 100 miles north of here, as one of the key events that gave rise to the birth of the modern environmental movement on Earth Day in 1970. The dramatic and fragile coastal environment that so defines Pacific life, reminds us on a daily basis of the importance of being sound coast and ocean stewards. Today my comments address three main topics: coastal land use management, offshore resource management and protection of marine ecosystems.

### **Coastal Zone Management - The Coast is Far from Saved**

Like many other coastal states, at least 85% of Californians live within an hours drive of the coast. This human pressure threatens the health of the natural habitats that coastal areas provide for a diversity of marine life. California and Hawaii have the dubious distinctions of being home to the largest number of threatened and endangered species in the country – many of them coastal and marine. The coasts also support critically important economies. Here in California ocean dependent industries contributed over \$17 billion dollars and nearly 400,000 jobs to the state economy in 1992. Nationally, roughly 75 percent of all U.S. commercial and recreational fisheries depend upon coastal habitats. Yet the coastal zone covers less than 10 percent of the nation's land area. It is an increasingly sought-after place for people to live and play, with more than half of the total U.S. population already residing within the coastal zone. Nationally another 3,600 people move into coastal communities every day, swelling the population. Not surprisingly, one in every six U.S. jobs is marine-related. This explosion of coastal

growth, if left unchecked, will result in the permanent loss of land and water habitats that are crucial to fisheries and other wildlife.

At the federal level there are conflicting programs that provide perverse incentives to develop the coasts, while others attempt to manage development and protect vital areas. The fundamental federal planning statute, the Coastal Zone Management Act (CZMA), established a voluntary program in 1972, which all but two marine and Great Lakes states have joined. Californians enacted a statewide citizens initiative, Prop 20, in 1972 that passed with overwhelming public support. That led to passage of the California Coastal Act (California Public Resources Code section 30000 *et seq.*) in 1976 which established a permanent statewide Coastal Commission to provide oversight of development within the coastal zone which ranges offshore from the three mile state waters limit inland to 1,000 yards in urban areas to five miles in significant resource areas.

However, after a nearly 30-year tenure, while the CZMA has helped promote better land use management in some states, it has failed to adequately protect coastal habitat and sensitive resources. The breadth, and huge variety, of state iterations of the federal goals is largely to blame, while insufficient funding has plagued the program as well. New approaches and a new vision are needed to generate the protection that critical coastal resources need in order to support viable fisheries and wildlife of all kind.

Environmentally harmful coastal development springs from many sources: insufficient funding, perverse incentives and lax or nonexistent standards to name a few.

### **1. Target Acquisition of Important Coastal Resource Lands.**

Various federal and state programs have defined, or are in the process of defining, areas of the coast that function as important wildlife habitat and have other resource values. These areas, including, for example, barrier islands, wetlands and buffer lands to protect estuaries, bays and coastal waters from runoff should be acquired and permanently protected from development through a variety of funding mechanisms. NRDC supports development of a variety of funding sources such as a competitive grants program and sale of public bonds. There is broad bipartisan support in California for resource bonds. In the past two years, the voters have overwhelmingly approved nearly \$7 billion in land and water bonds aimed largely at protecting coastal resources. Another such mechanism could be a “healthy coasts surcharge” that would be a percentage of each real estate transaction for transfers in the coastal zone, the proceeds of which would be placed in a fund exclusively earmarked for acquisition of coastal habitat.

### **2. End Perverse Federal Incentives for Coastally Destructive Development.**

Another major problem is the web of competing and inconsistent federal programs that actually encourage ecologically destructive coastal development, acting as perverse incentives for coastal destruction. These perverse incentives and other funds that enable or promote destructive development patterns on our coasts should be curtailed. Two major federal programs that promote inappropriate coastal development are the National Flood Insurance Program and the Army Corps of Engineers’ beach renourishment and

armoring programs. Both wield extensive influence over the development that occurs in critical coastal areas. For 20 years, federal agencies ranging from the Federal Emergency Management Agency, to the U.S. General Accounting Office, to the Department of Interior, to the Office of Technology Assessment, have correlated the direct linkage between the availability of U.S. taxpayer subsidized federal flood insurance and too often destructive coastal development. Similarly, pumping sand onto beaches harms valuable habitat and armoring coasts with seawalls, riprap, and the like can cause beaches to shrink and destroy submerged aquatic vegetation. Mining offshore areas for sand smothers, impairs, and destroys benthic communities that often serve a crucial role in the marine food web. California's coastal program has yet to effectively manage the proliferation of seawalls and other armoring devices.

On the protection end of the federal spectrum, the Coastal Barrier Resources Act (CBRA), and the system of lands and waters that it includes, is intended to protect sensitive coastal habitat from federally subsidized development, including federal flood insurance and Corps programs. CBRA should be expanded to the Pacific Coast. This program ends perverse incentives by prohibiting federal funding for new development on ecologically sensitive beaches, dunes, and islands included in the System. By withdrawing federal funds for new development, the CBRA slows or halts development in a majority of the areas contained within it. It has worked along the Atlantic and should be implemented elsewhere. The withholding of federal funds for coastally destructive development should be extended to the National Flood Insurance Program for any new development, or redevelopment, in undeveloped coastal habitats, including federal investment in roads and bridges. A specific percentage of all money spent on shore protection should be allocated for mitigation, planning, and design alternatives aimed at a return to natural shorelines and healthy shoreline functions so that coastal habitat can be protected and enhanced. Cutting back on wasteful federal "investments" would considerably decrease the amount of development in coastal resource lands.

### **3. Institute Meaningful Growth Control Measures to Protect Coastal Resource Lands.**

Between 1998 and 2015, the number of coastal residents is expected to increase nationally by close to 20 percent. This staggering number does not even include seasonal visitors and homes, which can add hundreds of thousands of residents to an area. If these trends continue, one-quarter of the nation's coastal watersheds could be developed by 2025. Sharp declines in coastal water quality, and major habitat loss, would accompany this level of development. The goal of protecting coastal resource lands must be a key driver of growth control measures, which must be implemented on the local, state, regional, and national levels. Resource protection land use measures include: (1) limiting impervious surfaces in watersheds to less than 10 per cent of the total land area; (2) setting residential densities at levels that can support transit and reduce vehicle trips per household, and minimize land consumption; and (3) protecting important coastal habitats. Any new funding under the CZMA should be tied to state and local governments instituting growth management regulations that conform to growth management principles.

#### **4. Strengthen Polluted Runoff Controls in the Coastal Zone Management Act.**

California consistently leads the nation in the number of beach closings and advisories posted each year. Public concern is very high about the safety of beach water. Pollution, coastal development and resource extraction activities are damaging U.S. ocean and coastal waters in virtually all regions of the nation. A recent U.S. EPA report concluded that the overall condition of our nation's coastal waters is "fair to poor." In 2000, more than 11,000 beaches reported one health advisory or closing. Fish kills occur regularly from outbreaks of red and brown tide, pfiesteria, and chemical and oil spills. Coastal wetlands acreage continues to decline, but losses are not fully documented and monitored. And a "dead zone" the size of New Jersey develops annually in the Gulf of Mexico due to nitrogen pollution in the Mississippi River.

California has passed a tough public right to know clean beaches program and fortunately, the CZMA has one program with great potential for protecting coastal ecosystems from pollution. In 1990, Congress recognized that polluted runoff was closing shellfish beds, increasing harmful algae blooms and dead zones, closing beaches and contaminating fish, and it required states with approved Coastal Management Programs to establish coastal nonpoint pollution control programs with enforceable policies to address polluted runoff. Going further than even the Clean Water Act, the 1990 amendments (known as CZARA), require enforcement of management measures where voluntary measures fail, creating a model for an effective national program to control the nation's number one water quality problem, polluted runoff. California is one of only five states (along with Maryland, Rhode Island, Massachusetts and New Hampshire) that have federally approved Coastal Nonpoint Pollution Control Program. We have already made promising progress by bringing the State Water Resources Control Board's water permitting authority together with the Coastal Commission's land use authority in a coordinated program to minimize and control polluted runoff from reaching coastal waters.

Unfortunately, however, after authorization for CZARA expired in 1995, only \$1 million in federal funds were appropriated to run the entire federal coastal runoff program between 1995-1998. Although Congress appropriated \$8 million in Fiscal Year 1999, and \$10 million in Fiscal Years 2000 and 2001, significantly more funding is needed to help states meet conditions for final approval, and implement approved program elements. The Coastal Nonpoint Pollution Control Program must be reauthorized, integrated into the CZMA with increased and dedicated funding, and strengthened to provide meaningful incentives and penalties for the failure to submit approvable programs. State polluted runoff control programs must be monitored and evaluated to ensure that they are being implemented to effectively reduce polluted runoff. States should be required to set meaningful specific goals (for example, a 30% reduction in nutrient loadings to coastal waters by 2006) and then held accountable to achieve those goals.

#### **Federal Offshore Resources – Protection of Sensitive Areas**

When the Santa Barbara oil spill blackened miles of beaches in 1969, citizen groups up and down the state and around the country sprang to life to advocate improved management of the federal waters three miles offshore. Californians have spoken repeatedly in strong bipartisan voices to express their position that the values of the State's sensitive coastal resources and productive coastal economy outweigh the environmental risks posed by increased oil and gas production on the Outer Continental Shelf. The low resource estimates for the Pacific region argue further against expanded development. From Big Sur to the spectacular coast of Maine, to the Florida Keys and back to Alaska's Bristol Bay, some of America's most important national coastal treasures have been protected so far from offshore oil and gas development by Congress and by two presidents – first by George H.W. Bush in 1991 and then extended by Bill Clinton at the first-ever National Ocean Conference here in Monterey in 1998. California's OCS deferrals protect the state's offshore area until at least 2012.

### **1. Continue Prohibitions on New Leasing in Environmentally Sensitive Areas Such as the Pacific Coast.**

Congress has consistently and appropriately recognized the environmental sensitivity of the entire Pacific coast by enacting a funding moratorium on leasing here for 20 years in a row. Areas currently protected by the congressional OCS moratorium on new leasing include all unleased tracts along the entire U.S. West Coast, the East Coast, Southwestern Florida (south of 26 degrees north latitude), and Bristol Bay in Alaska. The congressional OCS moratorium will continue to need to be renewed. It is appropriate that the Department of Interior's Minerals Management Service (MMS) has not incorporated OCS moratorium areas within its new proposed Five-Year OCS Oil and Gas Leasing Program for 2002-2007. NRDC opposes MMS' planned opening of "frontier" OCS basins in fragile Alaskan waters, as proposed by the new proposed Five-Year OCS Oil and Gas Leasing Program for 2002-2007.

There is no need to risk environmentally sensitive areas to development. Large reserves of natural gas are located in the federal waters of the central and western Gulf of Mexico, which are open to oil and gas leasing. This area is estimated to contain 60 percent of the undiscovered economically recoverable oil resources and 80 percent of the undiscovered economically recoverable gas resources estimated to be available *in the entire U.S. Outer Continental Shelf*, according to MMS. So, protecting sensitive areas still leaves the vast majority of the nation's OCS oil and gas available to industry.

There continues to be a broad bipartisan consensus on the appropriateness of OCS activities in most areas of the country. This consensus has been reflected in the consistently broad, bipartisan support for the existing congressional moratoria on leasing outside the central and western Gulf of Mexico. The moratoria have been endorsed by an array of elected officials from all levels of government and diverse political persuasions, from former Gov. Christine Whitman of New Jersey to Gov. Bush of Florida to California's own Gov. Davis.

## **2. Reduce the Risk of Oil Spills.**

Here in on the Pacific coast we've had more than our share of oil spills and the environmental and economic havoc they wreak, but spills are not the only environmental concern related to OCS development. Onshore industrialization, water pollution from drilling muds and produced waters and air pollution also can cause significant harm to the environment. Just to give you an idea of the extent of damage a spill the size of the *Exxon Valdez* can cause, the footprint of that spill, had it happened off the California coast, would have stretched along more than two thirds of the state's 1,000-mile-long coastline. More than 3,000 tankers travel along the California coast every year. So taking steps to minimize the risks from tanker spill is also important. California and the federal managers of the many National Marine Sanctuaries located off the coast here worked with the U.S. Coast Guard, U.S. and Wildlife Service, other officials, and affected stakeholders to recommend tanker lane patterns off the coast here designed to reduce the risks of a tanker spill hitting the particularly vulnerable resources of the rocky inter tidal areas and wildlife that live there such as the southern sea otter. NRDC recommends establishment of other tanker safety routes in along environmentally sensitive coastlines.

## **3. Maintain State and Federal Partnership Through Strong Consistency Authority.**

The federal Coastal Zone Management Act as amended provides a critical link between planning for federal energy exploitation and states' rights in preserving their coastal environment and economy. NRDC strongly opposes any weakening amendments to the CZMA, as have been proposed by the petroleum industry. NRDC and other environmental groups have intervened in a legal dispute now on appeal to the Ninth Circuit Court of Appeals to support the State of California's right to have a say in decisions to about the status of OCS leases.

Contrary to the administration's support for state's rights in other resource decisions, the U.S. Dept. of Interior is arguing in court that the state of California should not have the right to review proposals for oil drilling off its coast. The administration is appealing U.S. District Judge Claudia Wilken's ruling on June 22, 2001 that MMS illegally extended 36 undeveloped oil leases off the central California coast because it failed to comply with the Coastal Zone Management Act and the national Environmental Policy Act. Judge Wilken ruled that California was improperly denied a voice in deciding the fate of the leases. The judge's order froze all activities on the leases and required MMS to comply with federal environmental laws before moving forward.

The federal government's appeal signals two important, regrettable things. First, the administration is trying to make it easier to drill new oil wells off California's coast. "Second, administration officials have said repeatedly that they will respect local and state viewpoints on natural resource issues. But by seeking to overturn this federal court decision, the administration is trying to trample on local wishes, apparently only respecting local voices only when they agree with them. The consistency authority granted to states through the CZMA should be maintained legislatively and upheld

legally. It is a key tool in building state and federal partnership for coastal and ocean management.

### **Marine Ecosystems – Out of Sight and Too Far Out of Mind**

The U.S. Oceans Commission is challenged to move national policy away from treating the ocean as a limitless source of commodities and a dumping ground for human wastes, toward a vision of the ocean as a home for wildlife and a vulnerable natural system. Protection, recovery and stewardship of marine ecosystems must be a top priority if we want to sustain the wealth of goods and services—from fish to therapeutic drugs to inspiration and recreation—that the oceans have provided. To accomplish these objectives, we must change the way we think about the oceans and the way we govern them.

Around the country we are fishing down the food chain--removing large predators and whole layers of the food chain, shifting the structure toward domination by shorter-lived species with wide population swings, toxic algae blooms, and jelly fish). Overfishing has been the primary driver of ecosystem collapse in many cases, such as the now impoverished Chesapeake Bay, where removal of oysters that once filtered the whole volume of the Bay in a few days has left estuarine life more vulnerable to pollution and disease. Fishing, pollution, and other activities are curtailing the productivity and resilience of ecosystems, changing the chemical, physical and biological makeup of the seas in ways that restrict the goods and services that flow from healthy ocean systems. The historic focus on developing fisheries, the single-species orientation of management efforts, and the lack of attention to the health of ocean ecosystems underlies many of these problems.

#### **1. Develop a National Policy to Protect Ocean Ecosystems**

California enacted a comprehensive ocean planning statute over ten years ago. Implementation of that continues to need more enforcement. But we need a federal overarching national policy, applicable to all marine activities, to protect and restore the health and diversity of ocean ecosystems. Move fishery management away from the single species model; allow only uses that sustain all living marine resources, not just economically valuable populations, one by one. Recognize the importance of nonconsumptive uses of the ocean. Encourage the use of tools that protect ecosystems. Authorize and encourage the use of fully protected marine reserves and other protected areas. California's Marine Life Management Act and Marine Life Protection Act provide examples of such policies that won bipartisan support.

#### **2. Create a Cabinet Level Ocean Department.**

Oceans make up over half the country's area, serve as the planet's life support system, create an enormous amount of value through ecosystem goods and services. Yet marine issues have little visibility and no strong advocate at the highest levels of federal



government. Responsibility for ocean matters is scattered throughout many agencies and entities.

Elevate oceans within the federal system; better coordinate ocean-related activities across agencies. Note that the Stratton Commission recommended creating a new ocean agency *directly answerable to the President*, part of that agenda remains unfinished. The Stratton Commission also concluded that a Presidential coordinating council was not enough to address the problems facing the nation's oceans. Create a cabinet-level ocean department and a coordinating council.

### **3. Give the New Federal Ocean Agency an Ecosystem Protection Mandate and Broaden Authority.**

Our fishery management system isn't working. Over 40 percent of assessed fish populations are overfished, the status of most is unknown, scientists have identified over 80 marine fish populations that now face a risk of extinction, most fisheries are drastically overcapitalized, and we have made little progress toward minimizing bycatch and protecting habitat. Ecosystem damage, serial depletion of fisheries, and fishing down the food chain often go undetected under our current management regime. Fishing industry-dominated management councils have a fundamental conflict of interest that often weights short-term economics more heavily than conservation, with devastating consequences for the resource and the health of the fishing industry. No other set of resource users is allowed to regulate itself in this way. Fishery management councils are responsible for developing management plans and setting catch levels, but the National Marine Fisheries Service, not the councils, is accountable for making sure these decisions comply with federal law. This bifurcation of responsibility and accountability fosters delays and can hurt fish populations and ecosystems; when NMFS disapproves a decision, for example, it does not replace that council's plan with an adequate one, and the council may take months or years to correct the problem.

Give the responsibility for determining catch levels and other science-based management measures to a federal agency. The role of industry-based councils should be advisory and focused primarily on allocation. Shift away from the single-species approach and change the fundamental purpose of fishery management to protecting and restoring the health of ocean ecosystems (see above). Use zoning to restrict potentially damaging gears to appropriate areas where their use can be demonstrated to be harmless.

### **4. Strengthen the Role of Science and Shift the Burden of Proof.**

Independent scientific oversight should be strengthened, for example, by establishing a national science commission with regional arms. Shift the perspective of management; change the assumption that activities should proceed unless harm is conclusively demonstrated, to an assumption that a new activity should remain at a pilot level until enough information is gathered to show that it can be expanded without harm. California's Marine Life Management Act illustrates one way to make this shift. The

current reactive approach must be changed to a more proactive approach that emphasizes and incorporates risk assessment and precaution.

Thank you for your careful attention to our views. NRDC looks forward to continuing to work with the U.S. Commission on Ocean Policy along with the Pew Ocean Commission to develop bold leadership proposals that will produce lasting protection for the nation's embattled coastlines and rich ocean life.