



turn back the toxic tide

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October 2, 2009

The White House
White House Council on Environmental Quality
1600 Pennsylvania Avenue NW
Washington, DC 20500

RE: Interagency Ocean Policy Task Force Interim Report

Dear Ocean Policy Task Force,

As an environmental organization, the Basel Action Network (BAN) supports the Interagency's comprehensive national approach to ocean policy. Our oceans and marine habitat must be protected and managed in much the same way as our national forests and beloved wildlife. Ocean dumping is a growing concern and one such instance where current policies are failing to protect our waters.

BAN urges the Interagency to review current ocean dumping policies with particular emphasis on existing "artificial reefing" practices in the United States. States are using artificial reefs in an attempt to rebuild fisheries to sustainable levels to maximize their economic and environmental benefit to the nation. However, Dr. James Bohnsack, a research fisheries biologist with the National Oceanic and Atmospheric Administration, points out "...little direct scientific evidence exists to properly guide building efforts [of artificial reefs] and show long-term beneficial or detrimental impacts."¹

There are 14 Gulf and Atlantic States with active artificial reefing programs. Florida alone has 2,400 artificial reefs comprised of sunken cars, buses, tanks, tires, oil rigs and ex-military vessels.² States are turning to materials of opportunity as a low cost reef solution; however, materials of opportunity are not designed for fishery enhancement, and may actually deplete marine resources. Artificial reefs are fish-aggregating devices and provide concentrated fish populations. These concentrated populations increase commercial and recreational fishing opportunities; but, according to the Gulf States Marine Fisheries Commission (GSMFC), concentrated populations lead to overfishing and the decline of species within the vicinity of the reef site.³

U.S. Federal agencies including the Navy and Maritime Administration are responsible for contributing large quantities of toxic material to this ocean dumping waste stream via their inactive ship disposal programs. The agencies sink large vessels in open waters as a cost-effective disposal strategy, with artificial reefing as their justification. However, the U.S. Environmental Protection Agency (EPA) recognizes that sunken Navy vessels contain toxic materials including asbestos, polychlorinated byphenols (PCBs), iron, lead paint and antifouling paint, even after remediation in accordance with EPA's Best Management Practices. Disposal of toxic materials in the ocean is a violation of the Marine Protection, Research and Sanctuaries Act of 1972 as amended by the Ocean Dumping Ban act of 1988. This government ocean disposal program should be terminated indefinitely.

¹ *American Institute of Fishery Research Biologists Briefs, 1987.*

² Dodrill, Jon, Artificial Reef Program Administrator, Florida Fish and Wildlife Conservation Commission.

³ Lukens, R.R. and Selberg, 2004.

Furthermore, the act of sinking vessels at sea for the purposes of disposal is "ocean dumping" as defined by the London Convention of 1972 of which the United States has ratified and is obliged to uphold. Article 4 of that Convention prohibits the dumping of any Annex I substance; Annex I contains all organohalogen compounds (e.g. polychlorinated biphenyls [PCBs]).⁴ Additionally, the 1996 London Protocol which the U.S. has not ratified but has signed, acts as an amendment to the Convention and only allows the dumping of vessels if the contaminants have been removed to the maximum extent possible.⁵ Further, disposal of PCBs in any manner other than in a way where the persistent organic pollutant content is destroyed or irreversibly transformed is prohibited by the Stockholm Convention on Persistent Organic Pollutants,⁶ which the U.S. has not ratified but has signed (indicating agreement). Sinking government owned vessels clearly violates the United States' international obligations.

Case Example

The USS ORISKANY was sunk off the coast of Florida in 2006 under a risk-based disposal permit from the EPA. According to an October 2008 study conducted by the Florida Fish and Wildlife Conservation Commission (FWC) as part of the post sinking monitoring program, PCB concentrations in fish caught at the ORISKANY site are nearly twice that of the Navy's forecasted levels. 15 of 30 fish sampled had total PCB levels exceeding 20 parts per billion (ppb), the EPA's Tier 1 maximum monitoring screening value, with the average total PCB concentration value at 34 ppb. 6 of 30 fish had PCB levels ranging from 68 to 110 ppb.⁷ It is important to note that PCBs are transferred through the food web to humans as humans digest contaminated fish. PCBs are known carcinogens with no safe level of exposure as identified in the EPA's drinking water Maximum Contaminant Level Goals (MCLG) for PCBs, which is zero.⁸

The ORISKANY site is a popular diving and recreational fishing destination. Fish caught at this site clearly contain elevated PCB levels, of which the families of these divers and anglers are digesting without warning. The Florida Department of Health (DOH) only releases a PCB fish consumption advisory when fish tissue saturation is 50 ppb or above. Therefore the average 34 ppb of the 30 fish sampled at the site does not trigger public notification, nor does the fact that 6 of the 30 fish sampled contained 68 to 110 ppb, twice the DOH allowed concentration. The public remains unaware of the toxins they are digesting and the health risks associated, yet the Navy, the EPA and the DOH sit idle. It is clear that dumping Navy vessels at sea places the public and vital fisheries at unreasonable risk.

The interagency recommendations "...should prioritize upholding our stewardship responsibilities and ensuring accountability for all of our actions affecting ocean, coastal, and Great Lakes resources, and be consistent with international law, including customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea." BAN believes artificial reefing fits within this context and should be included within the nine prioritized categories for action discussed in the interim report. BAN's position remains that materials of opportunity (ships, cars, subway cars, etc.) dumped in the ocean as "artificial reefs" constitute ocean dumping and should be halted until scientific evidence suggests that the benefits of ocean dumping outweigh the toxic impacts to marine biology, water quality and human health.

Sincerely,



Colby Self
Basel Action Network

⁴ <http://www.austlii.edu.au/au/other/dfat/treaties/1985/16.html>

⁵ <http://www.austlii.edu.au/au/other/dfat/treaties/2006/11.html>

⁶ http://www.pops.int/documents/convtext/convtext_en.pdf

⁷ <http://www.sdafs.org/FLAFS/PDF/October%202008%20issue.pdf>

⁸ http://www.epa.gov/safewater/contaminants/dw_contamfs/pcbs.html