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VIA EMAIL: Barbara.Lee@dtsc.ca.gov

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Director
California Department of Toxic Substances Control
1001 I Street
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RE: DTSC Draft Stage 1 Alternatives Analysis Guide

Director Lee:

The undersigned organizations, representing members of the recreational angling and boating communities and associated industries, appreciate the opportunity to comment on the California Department of Toxic Substances Control's recently released Draft Stage 1 Alternatives Analysis (AA) Guide.

We have four fundamental objections to the draft Alternatives Analysis. First, it is incomplete by its own terms. While stakeholders appreciate the opportunity to comment on drafts of the initial chapters, we reserve the right to revisit, revise, supplement and otherwise amend these comments once the document is complete.

Second, the Alternatives Analysis impermissibly proceeds from a flawed premise in the case of fishing and angling equipment. As set forth below, in its Priority Work Plan the Department failed to make the required regulatory showing of harm from this equipment, merely assuming the existence of harm in California. The Alternatives Analysis then imposes the State's unmet burden on fishing and angling equipment manufacturers and retailers.

Third, the Alternatives Analysis is self-evidently scoped for large industries with substantial resources. Other product categories in the Priority Work Plan comprise industries dominated by a handful of large corporations with tens of billions of dollars of sales in the United States. Those product categories dwarf the fishing and angling equipment "industry," which is dominated by "mom and pop" small businesses incapable of complying with this scheme. Imposing these requirements will cause significant economic harm and limit consumer choices.

Fourth, the Alternatives Analysis fails to consider regulatory factors that are particularly relevant to fishing and angling equipment. The Department is obligated to consider the beneficial social utility and public health benefits of the product. Affordable fishing and angling equipment enable hundreds of thousands of Californians to enjoy the outdoors with their families and friends rather than maintain otherwise sedentary lifestyles. Supposed alternatives to lead fishing weights are prohibitively expensive and will force many of not most Californians away from fishing. Aside from the resulting recreational and social harms, lost sales of this equipment will result in significant economic harm to California through lost jobs and lost tax and license revenue. Moreover, most of California's wildlife management is funded through fishing license sales and federal excise taxes. An increase in cost of equipment will lead to a fall in angling participation and, consequently, the license and excise tax revenue necessary to manage California's wildlife.

The Alternatives Analysis Impermissibly Shifts the Department's Unmet Burden

Before adding fishing and angling equipment to the Priority Work List, the Department was obligated to comply with regulatory prioritization factors. Specifically:

> Any product-chemical combination identified and listed as a Priority Product must meet both of the following criteria:
>
> (1) There must be potential public and/or aquatic, avian, or terrestrial animal or plant organism exposure to the Candidate Chemical(s) in the product; and
>
> (2) There must be the potential for one or more exposures to contribute to or cause significant or widespread adverse impacts.

22 CCR § 69503.2(a). The Department's Priority Work Plan completely failed to identify any "significant or widespread adverse impacts" arising from the use of fishing and angling equipment. This should not have been a difficult bar to meet given that commercial and recreational fishing in California predates statehood and has been enjoyed by millions of California's citizens. The Department's failure to adduce any evidence of "significant or widespread impacts" in California - notwithstanding the long-term and widespread use of the equipment – makes self-evident that such evidence does not exist.

To the extent it made any effort at all to meet this regulation, the Department cited a 1994 EPA Federal Register Notice about a *proposed* ban on lead fishing sinkers. The term *proposed* is highlighted because no such EPA ban ever took place. The Department made no effort whatsoever to suggest any human health impacts from fishing and angling equipment. Moreover, the studies summarized in the Federal Register Notice are not relevant to avian exposure in California.

The petition rejected by the EPA, but erroneously relied on by DTSC, looked at mortality for four species: common loons (*Gavia immer*); Trumpeter swans (*Cygnus buccinators*); Mute

swans (*Cygnus olor*); and the Mississippi Sandhill crane (*Grus Canadensis pulla*). And while the EPA studies point to the toxicity of lead in general, the two swan species and the crane subspecies are not found in California. Although common loons may be transient residents in California in winter, the mortality study on this species was conducted during the bird's breeding and rearing season in New England. Such data, collected in a disparate environment thousands of miles away during a period loons are absent from California, cannot form the foundation for a finding of "significant or widespread effects" in California avian populations.

Furthermore, any study of avian mortality must distinguish between lead introduced by hunting, on the one hand, and lead introduced in the pursuit of angling. For many decades, hunters deposited tons of lead shot into the aquatic environment. While regulations now require the use of steel shot, the mortality studies implicitly relied on by DTSC occurred when hunters intentionally deposited tons of lead shot in marshes, lakes and rivers. By contrast, lead is not a disposable angling product in those environments.

The Audubon Society and Monterey Bay Aquarium, on their websites, cite numerous dangers to birds, such as oil spills, entanglement in gill nets or fishing lines, noise disturbance, pesticide contamination, and El Niño's as having significant impacts to birds, but don't even mention lead poisoning as an issue. And in a 2009 Journal of Wildlife Diseases article on Fishing Gear-Related Injury to Marine Wildlife[1] from the UC Davis Wildlife Health Center, the issue of lead poisoning does not even show up in the data tables. Clearly in California, there is no documented history of significant or widespread adverse impacts from lead fishing weights that could justify the inclusion of these items in a priority status.

The Department failed to meet its burden at the outset of this process, but now seeks to impose the unmet burden on every dealer, distributor, and manufacturer of fishing and angling equipment. The adverse impacts of any potential alternative cannot be evaluated in the abstract. A comparison must be made to the Priority Product, which in turn requires an analysis of that Product's adverse impacts, which the Department utterly failed to do.[2] Having failed to do its own due diligence to justify the inclusion of fishing and angling equipment in the Priority Product Work Plan, the Department has unjustly imposed an enormous burden on hundreds, if not thousands, of small businesses.

No such burden should be imposed unless and until the Department can establish that this equipment genuinely poses "significant or widespread adverse impacts" in California. Such evidence should be widespread if it exists at all.

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[1] Dau et all, Fishing Gear Related Injury in California Marine Wildlife; *Journal of Wildlife Diseases*, 45(2), 2009, pp 355-362

[2] To the extent that the Department believes that it has identified the potential adverse impacts of Fishing and Angling Equipment, such "identification" in the Priority Work Plan comprises one paragraph of loose speculation and one reference to a rejected EPA petition.

The Alternatives Analysis Burden Effectively Bans Most Fishing and Angling Equipment

The Draft Stage 1 Guide states that entities responsible for undertaking the Alternatives Analysis "may already employ individuals with the needed skills, experience, and knowledge to conduct the Alternatives Analysis, such as employees able to provide and evaluate process data, toxicological studies, engineering and design, project management, technical feasibility and economic analyses." According to 22 CCR § 69501.1 (60), responsible entities include manufacturers, importers, assemblers or retailers or in other words, virtually the entire supply chain needed to make most consumer goods available to the market.

In the case of the sportfishing industry, most industry participants are classified as small businesses. This is especially true in the retail sector, but also applies to the manufacturing sector due to the local nature of fishing that demands products be specifically tailored to meet the needs of anglers in a given area. Consequently, a significant portion of fishing tackle is manufactured by cottage businesses for local sale and approximately a third of all fishing tackle retail sales occur at locally owned and operated businesses that generate minimal net revenue annually.

Many of these small businesses lack the resources identified in the Draft Stage 1 Guide because they do not currently employ individuals with the expertise needed to conduct an Alternatives Analysis as described in the discussion draft. In fact, the data and analysis requirements for Alternatives Analysis reports are well beyond the capabilities of most companies in the industry at this time and would represent a serious burden to those attempting to make a living by providing products needed by California's 1.67 million anglers. Many small manufacturers, importers, assemblers and retailers lack the financial resources to absorb the costs associated with conducting an Alternatives Analysis internally or through hiring a qualified contractor to perform it on their behalf. Larger manufacturers, distributors and assemblers that operate across multiple states may have the capacity to perform an Alternatives Analysis, but may choose not to do so simply to sell products in a state where the cost of doing business is significantly higher or the regulatory environment demands that products be manufactured using different materials or processes that impact pricing conditions and or consumer demand.

Even if these larger responsible entities choose to comply with the Alternatives Analysis requirements outlined in the Draft Stage 1 Guide, many will be faced with significant uncertainty associated with an unknown regulatory response to the Alternatives Analysis's findings. The Draft Stage 1 Guide provides no explanation as to how a responsible entity can enhance the likelihood of achieving a desired outcome on the back end of an Alternatives Analysis, nor does it give any detailed assurances that suggest Alternatives Analysis will be evaluated consistently.

The consequences of requiring responsible entities to comply with the Draft Stage 1 Guide will be far reaching:

- Sales will fall as customers in California incur higher prices and reduced product choices. These losses are magnified because an unknown percentage of new or visiting anglers will not fish based on unscientific fears of health damage from handling fishing tackle. These same impacts are expected in other industries faced with similar changes. As for the economic damages from reduced fishing, for every 1% decrease in fishing tackle sales, California's economy may experience a loss of 360 jobs and a reduction of $3.34 million in state and local tax revenues.[3]

- Once a manufacturer ships product, control is typically lost regarding where the product may be resold. Wholesalers may ship to California retailers, and online retailers may sell to California residents. In such cases, manufacturers may incur legal costs even when trying to properly meet all regulatory requirements for priority products sold in California, thus driving more out-of-business or at least causing significant harm to families owning small businesses in the sportfishing sector.

- Given the small size of most fishing tackle manufacturers, conducting Alternatives Analyses for all of their products is cost prohibitive, leaving them at the mercy of bounty hunters while new label and legal requirements evolve.

The Alternatives Analysis Fails to Consider Social and Environmental Benefits

The Department is obligated to consider the beneficial social utility and public health benefits of the product. 22 CCR § 69506.5(b)(2)(A). Affordable fishing and angling equipment enable hundreds of thousands of Californians to enjoy the outdoors with their families and friends rather than maintain otherwise sedentary lifestyles. Supposed alternatives to lead fishing weights are prohibitively expensive and will force many of not most Californians away from fishing.

Perhaps the most unfortunate consequence of including fishing weights and gear in DTSC's Work Plan and subjecting them to the Alternatives Analysis requirement is the negative impact this will have on conservation of California's public trust resources. Each year, anglers provide approximately $58 million in fishing license fees and $16.1 million in fishing tackle excise tax revenues for fisheries conservation in California. By federal law, these funds cannot be used for any purpose other than fisheries conservation by the California Department of Fish and Wildlife (CDFW). These funds represent the lion's share of the CDFW's annual fisheries budget. Any reduction in fishing sales and participation resulting from the inclusion of fishing weights and

[3] Southwick Associates, *Economic and Participation Impacts From a Ban on Traditional Fishing Tackle in California*; May 13, 2015.

gear in DTSC's Work Plan will have a direct impact on state conservation funds. For every angler lost, California will need to find an additional $44 from other sources just to maintain current levels of conservation funding.

Unfortunately, the Draft Stage 1 Guide includes no requirement that the *positive* conservation or environmental benefits associated with Work Plan products be included in an Alternatives Analysis. According to the steps outlined in the Guide, there is very little guidance in terms of how or where responsible entities can or should explain negative or unintended consequences of using more costly or less available alternatives outside of technical analyses related to product performance, chemical composition, hazard assessment and life cycle analysis. Although a socio-economic analysis whose definition could accommodate this approach is referenced in the Draft Stage 1 Glossary, guidance on how or where to include this analysis is nowhere to be found throughout the rest of the document. Absent the ability to provide commentary on how limiting certain products availability to the public will impact consumers' access to goods and services, how it will impact core functions of government and how it will impact other environmental factors not covered in the Draft Stage 1 Guide, we are skeptical that an Alternatives Analysis will provide DTSC with the information needed to make well-reasoned, thoughtful decisions regarding product safety and regulation.

Finally, we remain concerned that DTSC's decision to include Fishing Weights and Gear as a product category in its Priority Product Work Plan is without merit. Consequently, we do not believe that these products should be subject to the requirements outlined in the Draft Stage 1 Guide if the Department has not first demonstrated that they present the potential for human or environmental exposure to a candidate chemical *and* the exposure potentially may result in significant or widespread adverse impacts consistent with the regulations found at 22 CCR § 69503.2(a)(1)-(2). To our knowledge, DTSC has yet to provide any credible or substantive evidence that fishing tackle or gear meets this standard.

Congressional Sportsmen's Foundation	American Sportsfishing Association	Coastal Conservation Association, California
Andy Treharne, Western States Director	Scott Gudes, Vice-President	Bill Shedd, Chairman