

CALIFORNIA DEPARTMENT OF HEALTH SERVICES
CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
DATED: DECEMBER 10, 2003

PETITIONERS:

ADMINISTRATIVE PETITION

Turtle Island Restoration Network
Animal Protection Institute
As You Sow Foundation
Center for Biological Diversity
Clean Water Action
Environmental Justice Coalition for Water
Environmental Working Group
Mercury Policy Project
Natural Resource Defense Council
New England Zero Mercury Coalition
San Francisco Bay Physicians for Social
 Responsibility
Sierra Club California

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INTRODUCTION

Petitioners, Turtle Island Restoration Network, et al., request that the California Department of Health Services and the Office of Environmental Health Hazard Assessment take immediate and effective action to fulfill their missions to protect, improve and enhance the health of all Californians by adequately educating and informing the public about the health threats associated with the ingestion of methylmercury contaminated seafood.

Recently, scientists and health care professionals have reported a number of cases of patients that have elevated levels of mercury in their bloodstream and who suffer from related disorders and disabilities. Recent clinical studies have highlighted the exposure of California residents to methylmercury contamination of seafood.¹ As a large coastal state with a population exceeding 34 million people, this health threat is significant.

As the leading agencies in charge of public health advisories for commercially caught and sportfished fish species in the state of California, we call upon the California Department of Health Services and the Office of Environmental Health Hazard Assessment, respectively, to implement an aggressive approach to reduce exposure to contaminated seafood. Efforts to educate consumers and health care professionals should be expanded to include a multi-media ad campaign; a wide distribution of educational brochures and information, including dissemination at point-of-purchase; public forums and advisories; postings at relevant fishing grounds in the state. All of these corrective measures should be undertaken in multiple languages that reflect the diverse population of the state. These actions when coupled together will help protect the public

¹ Hightower, J. 2003. Methylmercury Contamination in Fish: Human Exposures and Case Reports, Environmental Health Perspectives, Forthcoming.

health in Californian by reducing the exposure of California residents to the harmful effects of methylmercury contamination of seafood.

STATEMENT OF FACTS

There is increasing evidence that the ingestion of methylmercury contaminated seafood (specifically swordfish, shark, mackerel, tuna and tilefish) is having a deleterious effect upon public health. Research shows that consumers who eat seafood on a regular basis have elevated levels of mercury in their bloodstreams.² This has shown to be especially troubling for pregnant women, young children, nursing mothers and women of childbearing age. Methylmercury passes through the womb to developing fetuses where the reproductive toxicity of methylmercury can cause developmental delays and neurological deficits in children even at relatively low levels of exposure in utero.³

According to the Environmental Protection Agency, the effects of elevated levels of mercury include “central nervous system effects such as impairment of vision, motor in-coordination, loss of feeling, and at high doses, seizures, very severe neurological impairment, and death.”⁴ Recent evidence suggests that the risk of exposure to methylmercury is not limited solely to high-risk groups such as children and women of childbearing age. In a recent study published in the *New England Journal of Medicine* the researchers called for expanded warnings to all seafood consumers because of the relationship between consumption of fish with high levels of methylmercury and the increased risk of coronary heart disease.⁵ While fish consumption has been promoted as a healthy dietary option because of the presence of omega-3 fatty acids, and their ability to reduce the risk of cardiovascular disease, this study suggests that the mercury present in contaminated fish may counteract the health benefits of the omega-3 fatty acids. Recent research from the Chinese University of Hong Kong also supports the advice of expanded warnings, linking the consumption of mercury contaminated seafood to infertility in both men and women.⁶

If exposure to toxic substances, such as methylmercury, increases, the health of our children and families will be compromised. While it is well established that fish is a vital source of nutrients for adults and developing children, those species that contain elevated levels of methylmercury

² Ibid

³ National Academy of Sciences. 2000. *Toxicological Effects of Methylmercury*. National Academy Press, Washington, DC.

⁴ United States Environmental Protection Agency. 2001. *Mercury Update: Impact on Fish Advisories*. Office of Water, 4305; EPA-823-F-01-011.

⁵ Guallar, E., Sanz-Gallardo, M. I., Veer, P. v.'t, Bode, P., Aro, A., Gomez-Aracena, J., Kark, J. D., Riemersma, R. A., Martin-Moreno, J. M., Kok, F. J., the Heavy Metals and Myocardial Infarction Study Group. 2002. Mercury, Fish Oils, and the Risk of Myocardial Infarction. *New England Journal of Medicine* 347: 1747-1754

⁶ Christine M. Y. Choy, a, Christopher W. K. Lamb, Lorena T. F. Cheungc, Christine M. Briton-Jonesa, L. P. Cheunga and Christopher J. Hainesa. Infertility, blood mercury concentrations and dietary seafood consumption: a case-control study *BJOG: An International Journal of Obstetrics and Gynecology* Volume 109, Issue 10 October 2002 Pages 1121-1125

may be more harmful than beneficial. People should eliminate or at least limit their intake of species that contain elevated levels of methylmercury. For groups where seafood is a major source of protein, they should select more species from the lower part of the food chain where mercury concentrations are significantly lower. As seafood consumption is gradually increasing in the state of California, it is imperative that consumers be provided with adequate information to make educated decisions about the fish that they eat.

While some parts of the public health community are becoming increasingly aware of this growing threat, our public health agencies have failed to adequately respond. The efforts of California government agencies responsible for ensuring the public health, as well as the Food and Drug Administration, have on the whole been passive and lacking in a sense of urgency as contrasted with the point-of-purchase and aggressive media campaigns surrounding tobacco and alcohol consumption. In fact, while the Department of Health Services has designed a brochure regarding mercury contamination of commercially caught species, they have yet to translate it into languages other than English and have failed to distribute it throughout the state.

The recent legal action taken by the Attorney General's office to require retailers to post warning signs under the regulations of the Safe Drinking Water and Toxic Enforcement Act (Proposition 65) is a welcome action on behalf of the state. The passage of Proposition 65 by voters in 1986 was a clear signal that the public wants more information about the dangers and health impacts of the products that they are exposed to on a daily basis. Taking preventative action now to adequately inform the public of the health risks involved in consumption of mercury contaminated seafood will help reduce health costs due to mercury poisoning in the future, as well as promote a healthier diet and lifestyle for all Californians.

PETITIONERS

The Turtle Island Restoration Network (TIRN) is a non-profit organization based in Marin County with 3,000 members in California. TIRN and its members share a commitment to the study, protection, enhancement, conservation, and preservation of the marine environment and the diverse array of life that lives in it and is supported by it. TIRN is working to build links between marine conservation organizations and other movements concerned with environmental health and justice.

The Center for Biological Diversity is a non-profit organization based in Idyllwild, California committed to the protection of marine and terrestrial biodiversity. The Center works towards ensuring the long-term health and sustainability of marine species and the human communities that are dependant upon them.

The Mercury Policy Project (MPP) is a project of the Tides Center formed in 1998 to raise awareness about the threat of mercury contamination. MPP works to promote policies to eliminate mercury uses, reduce the export and trafficking of mercury, and significantly reduce mercury exposures at the local, national, and international levels. MPP strives to work harmoniously with other groups and individuals who have similar goals and interests.

The Environmental Justice Coalition for Water is comprised of numerous grassroots organizations across California committed to environmental justice. The Coalition has different priorities such as economic development, affordable housing, civil rights, pollution prevention, and public health, but share an understanding that our issues are impacted by water policy. We seek to elevate the issues and new voices of environmental justice to the regional and state level, and ensure that water policy development, management, and planning move forward in a manner that addresses issues faced by our constituency.

The Natural Resources Defense Council (NRDC) uses law, science, and the support of more than 1 million members and online activists to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things.

New England Zero Mercury Campaign works to achieve implementation of state Zero Mercury Plans that result in virtual elimination of the use and release of mercury by 2010 and promotes protective and effective health warnings to prevent mercury exposure.

Animal Protection Institute is a national non-profit animal advocacy organization representing 85,000 national members and supporters, 18,000 of who reside in California. API has been advocating for animals for over 30 years including an unwavering support for strong protections for marine life and the ecosystems on which they depend.

The Environmental Working Group (EWG) is a not-for-profit environmental research organization dedicated to improving public health and protecting the environment by reducing pollution in air, water and food.

San Francisco Bay Physicians for Social Responsibility is a non-profit educational organization committed to the elimination of nuclear and other weapons of mass destruction, the achievement of a sustainable environment, and the reduction of violence and its causes. With over 1,500 members, we strive to protect public health and the environment, with a focus on populations disproportionately affected by environmental hazards, particularly children. We work to reduce toxic hazards at health care facilities by supporting an end to mercury and polyvinyl chloride (PVC) plastic use, and eliminating incineration of most medical waste. SF PSR brings a powerful, scientifically credible, and widely respected message to the public about environmental health concerns.

The **As You Sow Foundation** is a non-profit organization dedicated to promoting corporate social responsibility. Their mission is to promote progressive social and environmental policies at companies through the Corporate Social Responsibility Program and through our Environmental Enforcement Initiative. These programs work to hold corporations accountable for complying with California's toxics labeling law, the Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name: Proposition 65.

Clean Water Action is a national citizens' organization working for clean, safe and affordable water, prevention of health-threatening pollution, creation of environmentally safe jobs and businesses, and empowerment of people to make democracy work.

Sierra Club of California is the legislative lobbying arm for all 13 Sierra Club chapters in California. Sierra Club members work together to protect our communities and the planet. The Club is America's oldest, largest and most influential grassroots environmental organization.

AUTHORITY

This petition is filed pursuant to the California Constitution, which guarantees the public the right to petition the government for redress of grievances [California Constitution Article 1, §3]. Additionally, this petition is filed pursuant to California Government Code 11347 et seq. This provision mandates a speedy response or a public hearing [California Government Code § 11347.1; California Government Code §11346.8(a)].

The California Mercury Reduction Act of 2001 states that “[d]ue to the bioaccumulation of mercury . . . in fish, the California Environmental Protection Agency [of which the Office of Environmental Health Hazard Assessment is a part] . . . has warned that adults and women who are pregnant or who may become pregnant should limit their fish intake.” Accordingly, to fully fulfill this mandate such warnings should be more prominently displayed and circulated and should be expanded to include recent research relating mercury contamination to health effects in adults.

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly referred to as Proposition 65, was intended to protect Californians from chemicals known to cause cancer, birth defects or other reproductive harm. Proposition 65 requires that people be notified about

exposures to such chemicals. As methylmercury compounds were added to the list of chemicals known to the state to cause cancer in May of 1996, and methyl mercury was added to the list of chemicals known to the state to cause reproductive toxicity in July of 1987, it is required that the state take the necessary actions to fulfill the mandate to warn the public of exposure to these compounds while present in seafood.

RELIEF REQUESTED

Petitioners request that the Department of Health Services and the Office of Environmental Health Hazard Assessment take the following actions and institute the following mechanisms to protect the public from this serious health threat:

1. Launch an aggressive multi-media campaign including public service announcements and commercials for radio and television, consumer alerts for newspapers and magazines and educational billboards and posters to be displayed prominently in key locations throughout the state.
2. Widely release public health advisories that include tuna, swordfish, tilefish, Chilean sea bass, king mackerel and shark and use the standards set by the National Academy of Sciences as accurate measures of risk and exposure.
3. Distribute these materials to public health agencies, family planning centers, obstetricians, pediatricians, public and private hospitals, cardiological health centers, medical associations, medical schools, midwife and nursing associations, seafood retailers and restaurants, and catering enterprises.
4. Design and distribute all materials and advertisements in multiple languages that reflect the diverse populations that reside in the state.
5. Collect baseline data on levels of consumption of contaminated species in California, comprehensive data on mercury levels in all California commercial, recreational fish, and fish imported into California and survey data on consumer awareness surrounding mercury contamination of seafood. These data should be collected and reported every year for the first three years of the program and every two years following until the levels of mercury in or consumption of these species in the state of California reach a level no longer deemed a significant public health threat.

CONCLUSION

In view of the seriousness of the present problem, petitioners urge the Director of the Department of Health Services and the Office of Environmental Health Hazard Assessment to take the remedial and preventative measures outlined in this petition. We appreciate your time and look forward to prompt response that will inform us of actions you will undertake on behalf of this serious issue.

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Respectfully submitted by the following petitioners:

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Cc: Governor Arnold Schwarzenegger, State of California
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Bill Lockyer, Attorney General of the State of California
Mark B. McClellan, Commissioner of Food and Drugs, Food and Drug Administration

Supporting Documents Available at www.seaturtles.org/ (click the programs & campaigns then the mercury, swordfish and seafood campaign):

1. Mercury in Food as a Human Health Hazard American- Medical Association Resolution
2. Mercury Levels in High-End Consumers of Fish Abstract- Dr. Jane Hightower
3. Mercury, fish oils, and the risk of myocardial infarction, Guallar, et al.
4. Brain Food: What Women Should Know about Mercury Contamination of Fish, CalPIRG, Environmental Working Group Report
5. FDA Mercury Advisory on Mercury in Fish, US Food and Drug Administration
6. State sues five grocery giants over toxic in fish, San Francisco Chronicle article
7. Mercury Warning Sign Survey Report, Turtle Island Restoration Network