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August 23, 2018

Linda Candelaria, PhD
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suit 500
Riverside, CA 92501-3348

cc: RB8.CuTMDL@Waterboards.ca.gov

RE: Attachment A to Resolution No. R8-2018-0071

Dear Dr. Candelaria and Members of the Santa Ana Regional Water Quality Control Board,

The Marine Recreation Association (MRA) is a multi-State association of public and private marine industry entities that support thousands of recreational boaters in the Western United States. We recognize the need to have healthy and sustainable marinas and adjoining waterways, and MRA has been outspoken about the proposed total maximum daily load (TMDL) for copper (Cu) in the Upper and Lower Newport Bay and the need to move away from Cu antifouling paints (AFPs) since 2015.

We appreciate the Regional Board's recognition of our requested changes in October of 2016. However, we respectfully ask **the Regional Board to not adopt the proposed amendments** until we have economically affordable and safe alternative AFPs, that have been studied and proven to be less harmful than Cu AFPs. Additionally, there are three primary concerns MRA has with the proposed adoption of resolution No. R8-2018-0071 that we believe can have devastating unintended consequences if they are not addressed.

1. **Alternative AFP's need additional time for studying both human health factors and environmental impacts.**
 - a. The memorandum submitted by Dr. Anghera of Latitude Environmental raises serious concerns regarding human health impacts of the current AFP alternatives. Dr. Anghera, stated from an Ecology 2014 Study that, "All three paints identified as *preferred* contain hazardous chemicals that pose human health and/or environmental risks and are categorized to be avoided... These chemicals that have a combination of either high persistence in environment, high bioaccumulation potential, and high human toxicity or ecotoxicity and are recommended to be avoided." This report is very disconcerting to MRA and we would implore the Regional Board to investigate these concerns prior to adopting the proposed amendments.
 - b. In the recent publication of Marina Dock Age in the May/June 2018 issue, the article titled *Washington State Halts Its Ban on Antifouling Copper Paints* states that Washington State's governor signed a bill on March 15th that delayed all phases of the ban on Copper AFP's until January 1, 2021. This is due primarily to the initial research conducted by Washington State's Department of Ecology Hazardous Waste and Toxic Reduction Program, which states "Our preliminary research indicated that some of the alternative biocidal paints might be more harmful to the environment than copper." Clearly, we need to ensure that the proposed

amendments will have clear guidance on the environmental impacts of alternative AFP's and ensure that alternatives are safe for human interaction.

2. The economic costs of available alternatives are cost prohibitive for middle class boaters.

a. The summary provided by Dr. Anghera states,

"... **there are only three** non-biocide paints tested in these studies that are still available (Table 5) and were recommended in one or more studies. **All three paints are designed for commercial vessels. All three paints must be applied by professionals.** Even though the paints are recommended alternatives to copper, Ecology (2014 and 2017) maintains concerns over hazardous chemicals within the paint that could pose a risk to humans and the marine environment. Many of the paints evaluated do not have full disclosure of ingredients because of the proprietary rights and many of the compounds being used have not been tested."

We are sure it's not the intention of the Regional Board to drive middle class boaters out of enjoying Newport Bay. However, the proposed amendments will essentially require all boaters to have their hulls repainted with alternative AFP's by professionals, which will force certain owners and families out of their boating experience.

3. The Implementation Plan and Schedule for Cu TMDLs places undue future burdens and liability on individual boat owners and marina owners/operators.

- a. Section 1.1.1 states, "The dischargers shall submit their own proposed implementation plan(s) and schedule(s) to achieve reductions of Cu discharges from Cu AFPs in accordance with the requirements identified in Task 1 above." The Dischargers/Responsible Parties are as listed: City of Newport Beach (City), County of Orange (County), Marina owners/operators, Individual boat owners, Underwater hull cleaners, and Boatyard owners/operators. This will create thousands of duplicative implementation plans and schedules, which will likely not be reviewed. We believe all of the implementation plans and schedules should be required only by the City of Newport Beach and the County of Orange, which have the necessary resources to accomplish the required tasks.
- b. Individual boaters and marina owners/operators cannot control Cu inflows into the bay from tributaries' and storm drains. Thus, Cu must be monitored and tested from the storm drains and tributaries prior to entering the bay to ensure that they are below Cu TMDLs that are being proposed. We believe that the current proposed amendments will leave individual boaters and marina owners and operators responsible for Cu TMDL's when the sources of Cu could be stemming from upstream.

MRA respectfully requests that the Regional Board decline the adoption of Resolution No. R8-2018-0071, given the issues we have stated above. MRA will continue to work with the Regional Board to find an equitable and justified solution to improve the water quality of Newport Bay.

Thank you for considering our position in this matter.

Sincerely,

Mark A. Sandoval
President