



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 16 2009

**OFFICE OF
WATER**

Ms. Miyoko Sakashita
Attorney
Center for Biological Diversity
351 California Street, Suite 600
San Francisco, CA 94104

Dear Ms. Sakashita:

On behalf of the U.S. Environmental Protection Agency, EPA would like to thank you for your December 18, 2007, letter and petition requesting that the Agency revise the marine pH water quality criterion and publish information to guide states in addressing ocean acidification. This letter responds to the Center for Biological Diversity's (CBD) petition.

As indicated in EPA's discussions with CBD, EPA is proceeding with a Federal Register notice regarding EPA's marine pH water quality criterion and is developing biological assessment methods and other technical guidance relating to evaluation of the health of coral reefs and associated water quality. We plan to publish a Notice of Data Availability (NODA) by April 15th, and we plan to publish guidance regarding coral biocriteria by the end of 2009.

EPA has reviewed the Petition for Revised pH Water Quality Criteria submitted by CBD on December 18, 2007, and the 60-day notice of intent to sue submitted by CBD on November 13, 2008. EPA has carefully considered the requests in these documents and the supporting information submitted by CBD. EPA agrees that these documents have identified concerns regarding marine pH. Accordingly, EPA will publish in the Federal Register for public comment a NODA. The notice will state that EPA has received scientific information related to some of the recently observed changes and potential impacts of ocean acidification on the marine environment, (EPA will present a bibliography of the information submitted by CBD and other relevant information available to EPA). The NODA will also solicit additional scientific information and data, as well as ideas for effective strategies in both State and Territorial water programs to address the impacts of ocean acidification in their waters. This information can then be used as the basis for a broader discussion of ocean acidification and marine impacts. The NODA will:

- 1) ask for input from the public on the scientific information presented in the NODA;
- 2) solicit additional information related to the current pH criterion for marine waters including how the criterion could best be expressed;



- 3) solicit information regarding the implementation of the criterion related to new information on ocean acidification;
- 4) solicit information, science and data on the general subject of ocean acidification, as well as ideas for effective strategies for State and Federal water programs to serve as the basis of a broader discussion of ocean acidification and marine impact issues.
- 5) solicit additional information that may be used to develop guidance and information on ocean acidification pursuant to Clean Water Act Section 304(a)(2) for States and the public.

After the comment period closes, the Agency will evaluate the information received in considering whether the criteria revision is warranted at this time. EPA will make final its decision regarding the evaluation of the information received within one year of the date of publication of the NODA.

EPA will also be publishing additional information regarding the development of coral biocriteria in a framework document to aid states and territories in their development, adoption, and implementation of biocriteria in their respective water quality standards. EPA plans to publish this coral biocriteria framework document by December 2009 to assist in this effort. This document will complement the "Stony Coral Rapid Bioassessment Protocol" (RBP); EPA/600/R-06/167, July 2007, which provides a methodology for assessing the health and condition of stony corals. Use of the RBP by interested states and territories provides the ability to establish a baseline for coral reef structural health, provides the capacity to derive biocriteria for corals and reef structures, and provides a scientifically defensible method for assessing use attainment in marine waters, as well as evaluating the impact of stressors, such as ocean acidification on corals and coral reef structures.

We understand, based on our discussions with CBD, that these actions will address the concerns outlined in the two submissions identified above and that no further response is necessary. EPA would like CBD to commit to refrain from a lawsuit now and then agree to withdraw its petition and NOI effective on the release date of the NODA in the Federal Register.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Grumbles", written in a cursive style.

Benjamin H. Grumbles
Assistant Administrator