December 3, 2007

Clerk of the Board
California Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

SUBMITTAL OF COMMENTS

Re: Staff Report – California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit

On behalf of the Pacific Merchant Shipping Association (PMSA), a maritime trade association representing marine terminal operators and ocean carriers operating at all of California's public ports, we would like to express our concerns with several aspects of the Staff Report on Greenhouse Gas Emissions levels regarding its consistency with international and national guidelines.

We are not opposed to reducing Greenhouse Gasses, but we would like to make sure that the basis on which CARB is working to do so is equitable, and to that end PMSA would respectfully request that the Staff Report presented be amended to be consistent to the IPCC/UNEP/WMO 2006 guidelines with respect to oceangoing vessels and to properly restate the definition of "California waters."

We agree with the Staff Report's conclusion (at 9) that "consistency [with international and national guidelines and protocols] maximizes the comparability of the inventory with inventories from other states and nations. This is important to facilitate the future linkage of California's program with regional, national, and international greenhouse gas emission reduction programs." The Staff Report also accurately outlines the importance of the use of the IPCC/UNEP/WMO 2006 guidelines and PMSA whole heartedly endorses this outline and its use by the Board.

However, contrary to these conclusions, and the benefits of the guidelines that are being garnered in every other instance by CARB staff with regard to international and interstate transportation sources, the inventory inexplicably includes the use of marine bunker fuels in California. U.S. and foreign-flagged ocean-going vessels should be dealt with by CARB consistently with the international policy guidelines precisely because the fleet has a greenhouse gas emissions profile that is global in nature. In that regard, vessels using marine bunker fuel are exactly the type of emissions source that is

intended to be linked to California's program through common and consistent international and national guidelines and protocols and should not be treated any differently than aviation sources.

No explanation for this disparate treatment is given other than it is an "exception" to "an effort to be consistent" with international guidance. No explanation is given for the staff's determination that marine vessels in interstate and foreign commerce should be treated differently than interstate and foreign aviation or any other transportation source. Again, under international standards the world's ocean going vessel fleets are precisely the type of emissions source meant to be captured outside of disparate local and national greenhouse gas inventories, in order to avoid double counting and ensure comparability between and among national, and in this instance a State's, emissions inventories. Yet no rationale is given for why these rules are not to be applied to marine sources, even though such consistency is in the State's interest given the number of agreements made by the Administration with other countries and states to decrease GHG emissions and increase coordination of efforts to do so.

This consistency is especially important to our industry as we will soon be working with the International Maritime Organization (IMO) and its Marine Environment Protection Committee (MEPC) to both strengthen the existing fuel and emissions standards of MARPOL Annex VI and working to respond to the call in IMO Resolution A.963(23) to limit and reduce greenhouse gas emissions from international shipping. Indeed, the MEPC has adopted a work plan to improve the existing GHG emissions reviews, and the CO2 data already received as a result of IMO work to date, specifically in order to avoid unilateral action either on a regional or national level. The MEPC's current mission is to continue to take the global lead in developing GHG strategies and mechanisms for international shipping and to coordinate with other United Nations bodies. In this context, consistency with the international guidelines remains of paramount importance for ocean going vessels.

In addition, PMSA is troubled by the inclusion of the methodology introduced by the Staff Report that "[f]or purposes of calculating emissions from ships, California waters extend to 24 nautical miles from the coast." This assertion is without basis in law, practice or precedent and we would petition the Board to have it stricken from the Staff Report as the state's geographic boundary extends only to three nautical miles seaward of California's coastline. To claim otherwise, as done in the Staff Report, is a repudiation of two United States Supreme Court Cases on the topic (*United States v. California,* 332 U.S. 19 (1947), *United States v. California,* 381 U.S. 139 (1965)), the International Law of the Sea, and established principles of federal preemption (see Submerged Lands Act, 43 USC §1301 et seq.).

Further, we would point out that the utilization of this novel definition also renders the stated purpose of "using the IPCC methodologies ton ensure comparability" functionally moot, for the simple fact that no other state, national government or international rulemaking body has, should or conceivably will acknowledge the claims of the State of California to any jurisdiction extending to 24 nautical miles from the Coast. It is thus incompatible with other national, state or international inventories.

Perhaps more importantly still the definition of "California waters" used is facially inconsistent with the California Constitution (See Sec. 2, Article III, adopted November 7, 1972). The "Boundary" section of Article XII of the original 1849 California Constitution defines the extent of California's territory, and states:

> "The Boundary of the State of California shall be as follows :
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> Commencing at this point of intersection of 42d degree of north latitude with the 120th degree of longitude west from Greenwich, and running south on the line of said 120th degree of west longitude until it intersects the 39th degree of north latitude; thence running in a straight line in a south easterly direction to the River Colorado, at a point where it intersects the 35th degree of north latitude; thence down the middle of the channel of said river, to the boundary line between the United States and Mexico, as established by the Treaty of May 30th, 1848; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction, and following the direction of the Pacific Coast to the 42d degree of north latitude, thence on the line of said 42d degree of north latitude to the place of beginning. Also all the islands, harbors, and bays, along adjacent to the Pacific Coast.

PMSA appreciates the opportunity to comment on the Staff Report and would encourage CARB and its staff to partner closely with us on any and all GHG issues that arise regarding the maritime industry. While significant reductions from increases in efficiency from one sector alone will not solve the State's greenhouse gas emissions issue, we are proud that ocean shipping is one of the most environmentally friendly methods of transporting freight on a CO2 emissions per ton per mile. We look forward to working with CARB on meeting its goals and reducing these and other emissions from ocean going vessels.

Please feel free to contact PMSA on this and any other issues that arise regarding the maritime industry. If you have any questions or need clarification of our abbreviated comments, please feel free to contact me or PMSA legislative advocate, Shaudi Falamaki Fulp, KP Public Affairs at (916) 448-2162 or by e-mail at sfalamaki-fulp@ka-pow.com.

Sincerely,

John R. McLaurin

John McLaurin
President

cc: Mary Nichols, Chair, Air Resources Board
Boardmembers, Air Resources Board

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