EXHIBIT 4

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CALIFORNIA SEA URCHIN COMMISSION, PETER HALMAY, HARRY LIQUORNIK, CALIFORNIA ABALONE ASSOCIATION, AND SONOMA COUNTY ABALONE NETWORK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE OTTER PROJECT; ENVIRONMENTAL DEFENSE CENTER,

Plaintiffs,

vs.

KEN SALAZAR, *et al.,*

Defendants.

Case No: 5:09-cv-04610-JW

DECLARATION OF CALIFORNIA ABALONE ASSOCIATION

[Filed Concurrently With:
1. Notice of Motion and Motion of California Sea Urchin Commission, *et al.,* ;
2. Memorandum in Support Thereof;
3. Declaration of California Sea Urchin Commission;
4. Declaration of Peter Halmay;
5. Declaration of Harry Liquornik
6. Declaration of Sonoma County Abalone Network;
7. [Proposed] Order
8. [Proposed] Answer in Intervention]

Hearing Date: March 8, 2010
Time: 9:00 a.m.
Courtroom: 8, 4th Floor

DECLARATION OF CALIFORNIA ABALONE ASSOCIATION

1. I, Michael Harrington, am a member of the Executive Committee of the California Abalone Association ("CAA"), and I submit this declaration on behalf of CAA. I have served as a member of the CAA Executive Committee for four years.

2. Formed in 1971, CAA is a non-profit California corporation. The bylaws provide that CAA's mission is "To restore and steward a market abalone fishery in California that utilizes modern management concepts, protects and enhances the resource, and guarantees a sustainable resource for the future." CAA's 87 members are persons who held valid commercial abalone diving permits in 1997, the year the current abalone fishing moratorium was enacted. Approximately half of CAA's members are now commercial sea urchin fishermen.

3. Approximately 10% of CAA's 2009 budget was utilized for research regarding abalone populations at San Miguel Island, including factors impacting the population of this resource. While the resource evaluation has been confined to red abalone at San Miguel Island, the new knowledge of habitat and abalone behavior along with improved resource evaluation and management techniques will be applicable to other abalone species. San Miguel Island is in the otter management zone. As part of the research, CAA has sponsored abalone resource surveys conducted by the University of California Santa Barbara, the California Department of Fish and Game ("CDFG"), the National Oceanic and Atmospheric Administration, Channel Island National Parks, the National Park Service and conservation organizations. The data derived from these initiatives not only enhances understanding of the resource, but it also provides a practical framework for developing a viable sustainable fisheries management policy.

4. In addition to biological research, CAA is collaborating with the University of California in other matters. CAA is consulting with, and providing opportunities for, University of California at Santa Barbara Bren School Master and PhD students to participate in abalone management development

and resource surveys, as well as in legal, economic, and other issues regarding a commercial red abalone fishery cooperative.

5. Since 2005, CAA has invested over $720,000 in research assessing the red abalone resource and habitat at San Miguel Island, and participating in the committees, and organizations and activities discussed in paragraphs 3-4 above and 6-7 below.

6. The commercial abalone fishery in California started in the late 1880s. In October of 1997, California Governor Pete Wilson signed SB463 into law. This State law created a moratorium on commercial fishing for abalone in waters south of San Francisco. Waters north of San Francisco were already reserved for sport fishing only. The bill also required CDFG to prepare a comprehensive abalone recovery and management plan ("ARMP") by January 1, 2003 (CDFG Code §5522). CAA was instrumental in including language in the ARMP allowing for a reopening of the abalone fishery in locations where abalone populations recover sufficiently to permit a commercial fishery to occur. This plan, advocated by CAA, would be implemented initially for red abalone at San Miguel Island given that viable abalone populations currently exist at San Miguel Island. In fact, abalone population densities at San Miguel Island appear to be above the Minimum Viable Population ("MVP") level. Other areas, such as Santa Rosa Island, may also be considered for a renewed commercial fishery once data are available to show the acceptable density criterion has been met. Both San Miguel Island and Santa Rosa Island are in the current no sea otter management zone.

7. In December, 2005, the California Fish and Game Commission ("Commission") adopted the ARMP recommended by CDFG. At that time, CAA was asked by the Commission to work with CDFG to begin developing a limited abalone fishery at San Miguel Island. The discussions with CDFG and the Commission following adoption of the ARMP led to the creation of the San Miguel Island Abalone Fishery Advisory Group ("AAG") that includes representatives from the commercial fishing, recreational diving, marine conservation, and fisheries science sectors. CDFG and CAA have provided the funding for the AAG.

8. In 2010, CDFG will make its official recommendation to the Commission regarding the opening of a demonstration abalone fishery at San Miguel Island. The CAA has been, and remains, the driving force behind assessing and managing the abalone resource at San Miguel Island. Although reopening the commercial abalone fishery will require approval of the Commission, CAA expects that approval will be given because abalone populations at San Miguel Island are already above the MVP. If the abalone fishery reopens, the opportunity to participate will be a priority given to CAA members. Cal. Fish and Game Code, § 5522(e). However, if the otter management zone is abolished, sea otters will enter that zone and sea otter predation on abalone will reduce abalone populations below the MVP, thus preventing the abalone fishery from reopening. "Sea otter range expansion along the coastline towards Santa Barbara would preclude the reestablishment of abalone fishing in this area." Draft Supplemental Environmental Impact Statement, Translocation of Southern Sea Otters, U.S. Fish and Wildlife Service, August 2005, at 148.

9. According to the U.S. Fish and Wildlife Service ("FWS") Southern Sea Otter Recovery Plan, the sea otter diet includes abalone, sea urchins, lobsters, mussels, clams, crabs, and other species.

10. Conflicts between sea otters and shellfish fishermen have become increasingly common as sea otter populations increase. Sea otters prey on many species of shellfish, particularly sea urchins and abalone. Sea otters entering a new area reduce shellfish populations to a level such that no viable commercial fishery can be maintained. Within established sea otter ranges, nearly all abalone populations are confined to crevices that are inaccessible to otters because of sea otter predation and the average abalone size is half that of the population outside the otter range. Tegner, Mia J., J. D. DeMartini, K. A. Karpov, 1992, The California red abalone fishery: A case study in complexity, at 370-383, reprinted in: S.A. Shepherd, M.J. Tegner, and S. Cuzman del Proo (eds), Abalone of the World: Biology, Fisheries and Culture, Blackwell Scientific, Oxford U.K., Draft Environmental Document, Pink, Green and White Fishery Closure, State of California, The Resources Agency, California Department of Fish and Game, August 1995, *et al.*

11. In areas newly colonized by sea otters where abalone are abundant, abalone are a favored prey of sea otters after urchins. If a group of 50 male otters moved into such an area, and each otter weighed an average of 60 pounds, typical for male otters, and each ate 25%-30% of its body weight daily, again typical for otters, and if 60% of the diet was abalone, then these otters could easily consume approximately 500 pounds of abalone each day. In only one year, it would be possible for the otters to consume 90 tons of abalone. Such a rate of consumption would take the abalone population below the MVP level and prevent the abalone fishery from every reopening. For comparison purposes, in 1996, the last year the commercial abalone fishery was open, commercial abalone landings were 114.75 tons.

12. As scientists have noted, "Unless the sea otter is eventually contained, the State's Pismo clam, sea urchin, abalone, certain crab, and possibly lobster fisheries will be precluded. Otters do not extirpate these shellfish stocks, they merely reduce the exposed biomass to densities well below those necessary for profitable commercial exploitation or satisfactory recreational use. In all the cases, where sea otters have moved into either pristine areas where there has been no human take in natural preserves such as Point Lobos and Hopkins Marine Station or in zones of utilization, there has been a reduction of over 90% in numbers of shellfish counted on transects. Burge 1973, Miller et al. 1975, California Department of Fish and Game 1976. The only remaining macro-invertebrates of edible size are observed deep in crevices where otters cannot reach them (Ebert 1968; Lowry and Pearse 1973, Cooper et al. 1978). Whenever one of these large forage items leaves its protective habitat where otters are established, it apparently quickly becomes otter food." The Sea Otter in California, Miller, Daniel J. California Cooperative Oceanic Fishery Investigation, Report, Vol. XXXL 1980, p. 11.

13. Other scientists also recognize that when sea otters reoccupy an area the result of sea otter predation on shellfish is the end of commercially viable fisheries. "The documented loss of shellfish fisheries associated with sea otter reoccupation strongly suggests the pattern can be used to predict future losses whenever sea otter range expansion occurs." Relationship Between Sea Otter Range expansion and Red Abalone Abundance and Size Distribution in Central California, Wendell,

Fred, CDFG, Vol. 80, No. 2, pg 45-64, 1994. Another scientist stated: "within their established range, otter foraging clearly precludes commercial fisheries for abalone and sea urchins." Tegner, *supra*, at 370-383.

14. Further illustrating the conflict between sea otters and shell fisheries are the events at San Nicolas Island after otters were translocated to that Island. Although relatively few otters were translocated and remained initially, red abalone landings in this once vital commercial fishery declined as a percentage of State landings from 41% in 1987 to 30% in 1988, 12% in 1989, and 3% in 1990. Supplemental Environmental Document on Abalone Sport Fishing, California Department of Fish and Game, 1991. In 1998, when 100 sea otters entered the Cojo Anchorage in Santa Barbara County, sea otter predation on shellfish rendered the area not commercially viable within three months.

15. In 1998 and again in 1999, approximately 100 male otters entered the management zone south of Point Conception. In 2000, approximately 80 sea otters entered the management zone. These periodic incursions have continued. This is the typical pattern for sea otter range expansion. The first incursions are by males, as has been the case so far, followed eventually by females and pups at which time the area becomes permanently reoccupied. Indeed, since 2000, there have been 50-100 sea otters going in and out of the management zone on a regular basis.

I hereby declare and certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. It is based on my personal knowledge and, if I were called to testify in this court proceeding, my testimony would be the same as that contained in this Affidavit.

Dated: December 15 2009

CALIFORNIA ABALONE ASSOCIATION

By: _____
Michael Harrington
Executive Committee