

February 25, 2022

COMMENTS ON THE PROPOSED SINGLE-USE PLASTICS PROHIBITION REGULATIONS

Presentation to Environment and Climate Change Canada



February 25, 2022

Hon. Steven Guilbeault
Minister of Environment and Climate Change
Environment and Climate Change Canada
RE: Single-Use Plastics Prohibition Regulations

Dear Hon. Minister Guilbeault,

The United Nations has called plastic pollution the second most ominous threat to the global environment after climate change. The Single-Use Plastics Prohibition Regulations present Canada with the opportunity to demonstrate strong leadership by decreasing our consumption of harmful single-use plastics (SUP) and protecting our oceans. With the release of the draft Single-Use Plastics Prohibition Regulations, the federal government has taken an important first step in addressing the plastic crisis. As highlighted in the Regulatory Impact Assessment Statement:

“Action is needed to restrict or eliminate SUPs that pose a threat of harm to the environment.”

To meet the federal government’s goal, Oceana Canada is calling on Environment and Climate Change Canada to:

1. Strengthen definitions to include more harmful SUP items and close loopholes that currently allow items such as plastic cutlery to be replaced with more durable plastic.
2. Remove the exemption that allows banned products to continue to be manufactured and exported.
3. Revise the retail sales exception on SUP straws.
4. Advance the coming into force of the proposed regulations so that all bans are in place six months after the regulations are published.

The government has an exceptional opportunity to create a foundation to substantially eliminate harmful plastic items in Canada.

The current draft of the Single-Use Plastics Prohibition Regulations is a first step to eliminating harmful SUP. However, it does not achieve the goal of reducing SUP usage enough to protect our oceans. There is a disconnect between the ambition expressed by the public commitments of our elected officials and the scope and effect of the proposed regulations.

By integrating Oceana Canada’s recommendations, Canada has the opportunity to join other nations that have banned harmful SUP to protect the environment. Common items such as straws, bags, shrink wrap, ear swabs, cutlery and beverage containers have been banned by countries, states and municipalities globally, with key learnings about removing SUP from the market and examples of how plastics industries have circumvented these restrictions and added to national SUP pollution problems. See Appendix I for examples of SUP bans and key learnings about their implementation, highlighting both positive outcomes and those with plastic pollution setbacks from South America, The United States, and Europe.

Strong action is needed now. The regulations as they are currently drafted fall short of Canada's ambition of reaching zero plastic waste by 2030.

Recommendations

1. Strengthen definitions to include more harmful SUP items and close loopholes that currently allow items such as plastic cutlery to be replaced with more durable plastic.

Oceana Canada is calling for an expansion of proposed banned SUP to include plastics commonly found on our beaches and in our oceans and to eliminate product standard loopholes that allow for other plastic manufactured products – that are equally or more environmentally harmful – to substitute SUP.

The proposed definitions establish SUP product specification thresholds that plastic manufacturers can easily overcome. They invite the manufacturing of more durable plastic substitutes for SUP as currently defined in the regulations, which at the point of sale will be discarded as single-use in keeping with consumer habits, and which will mimic SUP in our landfills and oceans. Further, the proposed definition excludes harmful SUP items that are among the most common shoreline litter found on beaches that have reusable, refillable alternatives already readily available and integrated into consumer habitats, such as single-use hot and cold beverage containers and lids (for example, coffee and soda cups).^{1,2}

As currently drafted, Oceana Canada does not anticipate that the regulations will result in a reduction in SUP-listed items but rather introduce more problematic plastics entering our marine ecosystems. Further, there is no clear mechanism within the drafted regulations that establishes a continued review of harmful SUP categories and items that can be added in the future.

Oceana Canada proposes the following amendments:

Draft CG1 Regulations	Oceana Canada Proposed Amendments
<i>single-use plastic checkout bag</i> means a plastic manufactured item that is formed in the shape of a bag that is designed to carry purchased goods from a business and (a) is made from plastic film; (b) will break or tear if it is used to carry 10 kg over a distance of 53 m, 100 times: or (c) will break or tear if it is washed in a washing machine in a wash cycle recommended by the manufacturer for washing cotton or linen (sac d'emplettes en plastique à usage unique).	<i>single-use plastic bag</i> means a plastic manufactured item that is formed in the shape of a bag that is designed to carry purchased goods from a business and is made from plastic film (sac d'emplettes en plastique à usage unique).
<i>single-use plastic cutlery</i>	<i>single-use plastic cutlery</i>

¹ The Great Canadian Shoreline Cleanup (2020) Annual Report. Pp 7.

<https://shorelinecleanup.org/storage/resources/final-gcsc-annualreport2020-en-may10.pdf>

² Deloitte and Cheminfo Services Inc. (2019). Economic study of the Canadian plastic industry, markets and waste: Summary Report to Environment and Climate Change Canada, p. i.

http://publications.gc.ca/collections/collection_2019/eccc/En4-366-1-2019-eng.pdf

means a plastic manufactured item that is formed in the shape of a fork, knife, spoon, spork or chopstick and that, after being immersed in water maintained at a temperature between 82°C and 86°C for 15 minutes, changes its shape (ustensile en plastique à usage unique).	means a plastic manufactured item that is formed in the shape of a fork, knife, spoon, spork or chopstick (ustensile en plastique à usage unique).
single-use plastic foodservice ware means a plastic manufactured item that (a) is formed in the shape of a clamshell container, lidded container, box, cup, plate or bowl; (b) is designed for serving or transporting food or beverage that is ready to be consumed without any further preparation; and (c) is made from expanded polystyrene, extruded polystyrene, polyvinyl chloride, a plastic that contains a black pigment produced through the partial or incomplete combustion of hydrocarbons or a plastic that contains any additive that, through oxidation, leads to chemical decomposition or to the fragmentation of the plastic material into micro-fragments (récipient alimentaire en plastique à usage unique).	single-use plastic foodservice ware means a plastic manufactured item that (a) is formed in the shape of a clamshell container, lidded container, box, cup, lid, pouch, plate or bowl; (b) is designed for serving or transporting food or beverage that is ready to be consumed without any further preparation; and (c) is made from or contains expanded polystyrene, polypropylene, perfluoroalkyl and polyfluoroalkyl substances (PFAS), cellophane, chemically treated cellulose, polyethylene terephthalate glycol, extruded polystyrene, polyvinyl chloride, a plastic that contains non-detectable pigments such as black pigment produced through the partial or incomplete combustion of hydrocarbons or a plastic that contains any additive that, through oxidation, leads to chemical decomposition or to the fragmentation of the plastic material into micro-fragments (récipient alimentaire en plastique à usage unique).
single-use plastic straw means a plastic manufactured item that is formed in the shape of a drinking straw and that, after being immersed in water maintained at a temperature between 82°C and 86°C for 15 minutes, changes its shape (paille en plastique à usage unique).	single-use plastic straw means a plastic manufactured item that is formed in the shape of a drinking straw (paille en plastique à usage unique).
single-use plastic ring carrier means a plastic manufactured item that is formed in the shape of deformable container-surrounding bands and that is designed to be applied to beverage containers and selectively severed to produce packages of two or more beverage containers (anneaux en plastique à usage unique pour emballage de boissons).	single-use plastic beverage container packing device means a plastic manufactured item that is designed to be applied to beverage containers to form packages of two or more beverage containers (support de boissons en plastique à usage unique).

2. Remove the exemption that allows banned products to continue to be manufactured and exported.

Oceana Canada is calling for Canada to remove the exemption in s. 2 of the draft regulations, which permits the manufacturing, import for export and export of harmful SUP that the regulation proposes to ban domestically.

With the addition of plastic manufactured items to the List of Toxic Substances under the *Canadian Environmental Protection Act*, the government has signalled that the health of people and the health of the environment are negatively affected by plastics.

The exemption set out in s. 2 in respect to plastic manufactured items that are manufactured, imported or sold for export is contrary to Canada's environmental commitments and to the very purpose of the regulation. On emissions, plastics are modelled to contribute 1.34 gigatons of greenhouse gas per year by 2030 and 2.8 gigatons by 2050.³ On the protection of wildlife, plastics are commonly found within the stomachs of marine wildlife^{4,5} and cause death by starvation.⁶ On human health, microplastics have now been found in the placenta, impacting children.⁷ The continuation of Canada's contribution to global SUP pollution further puts our climate and wildlife at risk.

We are one ocean, connected by currents.⁸ Allowing plastic manufactured items whose sale is prohibited in Canada to be sold to other countries is still a Canadian contribution to the plastic crisis. The exemptions for manufacturing and import for export of SUP undermine the purpose and effect of the regulations and will result in SUP continuing to wash up on our shores.

The following amendments are proposed:

Draft CG1 Regulation	Oceana Canada Proposed Amendment
Non-application Export 2 Subject to sections 6 and 7, these Regulations do not apply in respect of plastic manufactured items referred to in section 1	Non-application Export 2 Subject to sections 6 and 7, these Regulations do not apply in respect of plastic manufactured items referred to in section 1

³ Shen, M., Huang, W., Chen, M., Song, B., Zeng, G., Zhang, X. (2020). (Micro)plastic crisis: Un-ignorable contribution to global greenhouse gas emissions and climate change. *Journal of Cleaner Production* 254.

<https://doi.org/10.1016/j.jclepro.2020.120138>

⁴ Brate, I. L. N., Eidsvoll, D. P., Steindal, C. C., Thomas, K. V. (2016). Plastic ingestion by Atlantic cod (*Gadus morhua*) from the Norwegian coast. *Marine Pollution Bulletin*. Vol. 112 (1-2). p 105-110.

<https://doi.org/10.1016/j.marpolbul.2016.08.034>

⁵ Hammer, S., Nager, R. G., Johnson, P. C. D., Furness, R. W., Provencher, J. F. (2016) Plastic debris in great skua (*Stercorarius skua*) pellets corresponds to seabird prey species. *Marine Pollution Bulletin*. Vol. 103 (1-2). p 206-210.

<https://doi.org/10.1016/j.marpolbul.2015.12.018>

⁶ de Stephanis, R., Gimenez, J., Carpinelli, E., Gutierrez-Exposito, C., Canadas, A. (2013). As main meal for sperm whales: Plastics debris. *Marine Pollution Bulletin*. Vol. 69 (1-2). p 206-214.

<https://doi.org/10.1016/j.marpolbul.2013.01.033>

⁷ Ragusa, A., Svelato, A., Santacroce, C., Catalano, P., Notarstefano, V., Carnevali, O., Papa, F., Rongioletti, M. C. A., Baiocco, F., Draghi, S., D'Amore, E., Rinaldo, D., Matta, M., Giorgini, E. (2021) Plasticenta: First evidence of microplastics in human placenta. *Environment International*. Vol. 146. <https://doi.org/10.1016/j.envint.2020.106274>

⁸ van Sebille, E., England, M. H., Froyland, G. (2012). Origin, dynamics and evolution of ocean garbage patches from observed surface drifters. *Environmental Research Letters*. Vol 7. <http://dx.doi.org/10.1088/1748-9326/7/4/044040>

that are manufactured, imported or sold for the purposes of export.	that are manufactured, imported or sold for the purposes of export.
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3. Revise the retail sales exception on SUP straws.

Oceana Canada understands the purpose of the prohibition on SUP straws set out in s. 3 of the regulations to be to stop their retail sale to consumers for regular use while maintaining access to them for those with medical needs.

The retail sales exception in s. 3(5) is broader than necessary to achieve this purpose, however. Making SUP straws available behind pharmacy counters achieves the purpose of allowing their convenient purchase while eliminating their availability in retail establishments such as convenience stores or grocery stores. Oceana Canada proposes the following amendments:

Draft CG1 Regulation	Oceana Canada Proposed Amendment
Exception – retail sales (5) A retail store may sell a package of 20 or more single-use plastic flexible straws to a customer if (a) the customer requests straws, and (b) the package is not displayed in a manner that permits the customer to view the package before purchasing it.	Exception – registered pharmacy sales (5) A registered pharmacy may sell a package of 20 or more single-use plastic flexible straws to a customer if (a) the customer requests straws, and (b) the package is not displayed in a manner that permits the customer to view the package before purchasing it.

4. Advance the coming into force of the proposed regulations so that all bans are in place six months after the regulations are published.

Oceana Canada is calling for the Single-Use Plastics Prohibition Regulations to come into force by the end of 2022.

The timeframe proposed is unreasonably long, especially given that the government has been communicating its intention to regulate these items since 2020. If a two-year anniversary of the coming into force of the regulations is maintained as proposed, Canada will domestically sell approximately 32.4 billion SUP checkout bags, 9.3 billion SUP cutlery, 1.7 billion foodservice ware containers, 376 million SUP ring carriers, 6.2 billion stir sticks, and 6 billion straws or the cumulative equivalent of 323868.3898 tonnes.⁹

There are no trade obligations restricting Canada from enacting the proposed ban six months after the regulations are registered. General Agreement on Tariffs and Trade (GATT) for the World Trade Organization (WTO) allows for many exemptions under Article 20,¹⁰ to which GATT-inconsistent environment measures are justifiable. A notable example of this measure was India etc. versus the United States on shrimp import bans for the protection of endangered sea turtles under the U.S. *Endangered Species Act* of 1973, which required trawlers to have turtle

⁹ Canada Gazette, Part I, Volume 155, Number 52: Single-Use Plastics Prohibition Regulation. Table 1.
<https://www.gazette.gc.ca/rp-pr/p1/2021/2021-12-25/html/reg2-eng.html>

¹⁰ World Trade Organization. Article XX. General Exceptions. p i.
https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art20_e.pdf

excluders on gear.^{11,12} Canada may avail itself of these legal exemptions for measures to protect the environment from SUP. It ought to do so and to accelerate the timeline for the coming into force of the Single-Use Plastics Prohibition Regulations.

The federal government made public its intent to ban the proposed six items in 2020. The lengthy phase-in proposed in the draft regulations will delay action on tackling the plastic crisis until 2024. Strong leadership and quick action on addressing the plastic crisis plastic are needed now. SUP manufacturing and sales within Canada should cease by the end of 2022 to make it Canada's year of peak plastic, resulting in SUP usage decreasing each year thereafter.

Our marine life cannot take on the burden of further pollution due to delays. The following amendments are suggested:

Draft CG1 Regulation	Oceana Canada Proposed Amendment
Coming into Force First anniversary 9 (1) Subject to subsection (2), these Regulations come into force on the first anniversary of the day on which they are registered. Second anniversary (2) Subsection 4(2) comes into force on the second anniversary of the day on which these Regulations are registered.	Coming into Force 9(1) These Regulations come into force six months from the day on which they are registered.

¹¹ World Trade Organization (1998). United States - Import Prohibition of Certain Shrimp and Shrimp Products. AB-1998-4. https://www.wto.org/english/tratop_e/dispu_e/58abr.pdf re

¹² The World Trade Organization. GATT Article XX. Decision on Trade and Environment. https://www.wto.org/english/tratop_e/envir_e/issu5_e.htm

APPENDIX I: International Examples of Single-Use Plastic Bans

Chile

In 2021, Chile passed the first law in Latin America to ban single-use plastics. The law is multi-tiered with actions including a ban on single-use products – no matter the materials – at all dine-in establishments, a ban on traditional plastic cutlery, cups, plates, boxes and straws for all deliveries and point of sale purchases, replacing them with biobased and compostable plastic. The law goes beyond banning SUP. It also includes measures to boost composting infrastructure, refillable systems for bottles and local recycling by requiring no less than 15 per cent recycled content by 2025 and up to 70 per cent by 2060. The recycled content must come from domestically recycled plastic in the recycled bottles that are commercialized.¹³

The European Union

In 2019, the EU published the Directive on reducing the impact of certain plastics products on the environment, which member states must have incorporated into domestic legislation by 2021. Similar to Canada's proposed SUP ban, the EU Directive targets consumption reduction, specifications on single-use plastic products and information systems and reporting. The Directive also includes further restrictions on placing single-use plastics on the market, product requirements, marking requirements, extended producer responsibility, separate collection, awareness-raising measures, coordination of measures between jurisdictions, penalties and evaluation and review.¹⁴ While the EU Directive showcases an extensive list of SUP items to be banned or covered by extended producer responsibility, including cups, lids, sanitary towels, cigarette filters and balloons, it has been vulnerable to industry workarounds. These include the relabelling of SUP as reusable¹⁵ and the proliferation of plastics marketed as “bio-degradable” or “natural” when in fact they are chemically treated cellulose or maize-derived plastics that continue to contribute to marine litter.¹⁶ Further, the EU Directive only applies to consuming SUP within member states and does not address its export. With its own draft SUP regulations, Canada has an opportunity to set a higher standard of regulation for domestic and foreign SUP consumption.

United Kingdom

In 2020, the UK introduced a ban on SUP straws, cotton buds and drink stirrers,¹⁷ with the intent to expand the listed items to include SUP plastic plates and cutlery.¹⁸

¹³ Diario Oficial de la Republica de Chile (2021) Ministerio del Interior y Seguridad Publica. Ley núm. 21.368 regula la entrega de plásticos de un solo uso y las botellas plásticas, y modifica los cuerpos legales que indica.

¹⁴ Directive (EU) 2019/904 Of The European Parliament And Of The Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment

¹⁵ Surfrider Foundation Europe. <https://surfrider.eu/en/learn/news/now-is-the-time-for-companies-to-stop-marketing-single-use-plastics-1211122215943.html>

¹⁶ Biodegradability of plastics in the open environment by the European Commission.

https://ec.europa.eu/info/research-and-innovation/strategy/support-policy-making/scientific-support-eu-policies/group-chief-scientific-advisors/biodegradability-plastics-open-environment_en

¹⁷ <https://www.gov.uk/guidance/straws-cotton-buds-and-drink-stirrers-ban-rules-for-businesses-in-england>

¹⁸ <https://www.theguardian.com/environment/2021/aug/27/single-use-plastic-plates-and-cutlery-to-be-banned-in-england>

The United States

In 2021, The Keep Food Containers Safe from PFAS Act was introduced to the United States Senate,¹⁹ quickly followed by the industry-backed U.S. Plastics Pact which called for a ban on 11 problematic and unnecessary plastics, including PFAS lining materials, in 2022.²⁰

The City of San Francisco

In 2007, the City of San Francisco passed a law to ban SUP checkout bags. It defined SUP checkout bags by their purpose and their thickness, only to have manufacturers increase the thickness of plastic bags.²¹ This led to the amendment of the law to include disposable item surcharges, in support of the City's Zero Waste 2050 goal.²² This example shows the need for definitions to avoid product specifications and instead address the single-use nature and purpose of the item subject to regulation.

¹⁹ Keep Food Containers Safe from PFAS Act (2021).

<https://www.hassan.senate.gov/imo/media/doc/PFAS%20Food%20Packaging%20Ban%20Bill.FINAL.pdf>

²⁰ U.S. Plastics Pact Problematic and Unnecessary Materials List: <https://usplasticspact.org/problematic-materials/>

²¹ San Francisco Environment Code (2007) Plastic Bag Reduction Ordinance. Ordinance No. 81-07

²² San Francisco Environment Code (2019) Environment Code – Checkout bag Charge ; Recyclable or Compostable Pre-Checkout Bags. Ordinance No. 172-19