



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE

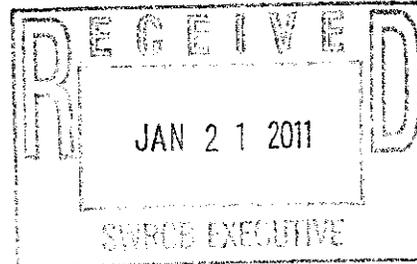
Southwest Region  
777 Sonoma Ave., Room 325  
Santa Rosa, California 95404-4731

Public Comment (11/16/10 Wrkshp)  
**Policy for Toxicity Assessment**  
Deadline: 1/21/11 by 12 noon

January 21, 2011

In response, refer to:  
SWRF/SWR3:JJD

Tom Howard  
Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814



Dear Dr. Howard:

NOAA's National Marine Fisheries Service (NMFS) thanks the State Water Resources Control Board (SWRCB) for this opportunity to comment on the Draft Policy for Toxicity Assessment and Control dated October 2010. This document presents a proposed state policy with the goal of minimizing toxic conditions in the California's surface water bodies caused by a variety of dischargers. These toxic conditions represent an adverse effect to Essential Fish Habitat (EFH) as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and may affect species listed as threatened or endangered under the federal Endangered Species Act (ESA). NMFS administers the MSA for the conservation and preservation of the Nation's fishery resources and is responsible for managing several ESA listed anadromous species, including Chinook and coho salmon, steelhead trout, as well as green sturgeon.

NMFS supports the proposed policy. It is expected to result in reductions in toxicity that impact marine and estuarine ecosystems. We congratulate the SWRCB staff for their hard work over the several years it took to research this topic, and develop this policy. NMFS expects that implementation of the policy will result in improvements to water quality and protection of beneficial uses which will benefit threatened and endangered species protected under the ESA as well as EFH.

NMFS would like to express support specifically to several provisions of the proposed policy:

1. The establishment of numeric statewide objectives to minimize acute and chronic toxicity that will replace the narrative standards currently in use;
2. The application of the numeric objectives and implementation provisions to all inland surface waters, enclosed bays and estuaries of the state, including both waters of the United States and surface waters of the state;
3. Superseding all toxicity testing provisions established in Regional Water Quality Control Plans (Basin Plans);

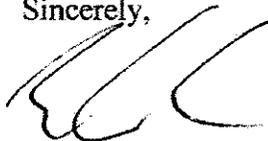


4. Classification of all major publically owned treatment works (POTWs) as meeting the reasonable potential threshold and therefore being required to conduct toxicity testing;
5. The requirement for routine acute toxicity monitoring, in addition to chronic toxicity monitoring, for those dischargers that demonstrate reasonable potential to exceed the acute toxicity objective;
6. The requirement for major dischargers to conduct monthly chronic toxicity testing with accelerated monitoring and Toxicity Reduction Evaluation/Toxicity Identification Evaluation requirements resulting from failures;
7. The requirement for minor dischargers to conduct quarterly chronic toxicity testing with accelerated monitoring and Toxicity Reduction Evaluation/Toxicity Identification Evaluation requirements resulting from failures;
8. The requirement for categorical exceptions to the policy to go through a California Environmental Quality Act compliance process;
9. The inclusion of storm water dischargers with Phase I or Phase II National Pollutant Discharge Elimination System permits, as well as individual industrial storm water permittees in the program with at least four chronic toxicity tests conducted per year of the permit as outlined in the draft policy; and
10. The inclusion of channelized dischargers regulated exclusively under the Porter-Cologne Water Quality Control Act in the program.

In addition to these statements of support, NMFS has several recommendations that should improve the protectiveness of the draft policy:

1. NMFS recommends the application of the numeric effluent limits for toxicity to the storm water permittees. NMFS recommends allowing for exceptions only after the dischargers produce five years of data (one permit term) showing no toxicity concerns.
2. NMFS recommends requiring the Water Boards to apply numeric effluent limitations for toxicity in their conditional waivers or nonpoint source pollution Waste Discharge Requirements for channelized dischargers. NMFS recommends allowing for exceptions only after the dischargers produce five years of data (one permit or conditional waiver term) showing no toxicity concerns.
3. NMFS recommends that the determination of insignificant discharger status for non-traditional municipal separate storm water systems and municipalities with populations below 50,000 be left with the individual Water Boards as they should have more information than the State Water Board to inform this decision. However, NMFS also recommends that these determinations require State Water Board review and approval.

Sincerely,



Steven A. Edmondson  
Southwest Regional Habitat Manager  
Habitat Conservation Division

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