July 2000

CALIFORNIA COASTAL NONPOINT PROGRAM
NOAA/EPA DECISIONS ON CONDITIONS OF APPROVAL

FOREWORD

NOAA and EPA are pleased to fully approve California's coastal nonpoint pollution control program (coastal nonpoint program). On June 30, 1998, NOAA and EPA approved California's coastal nonpoint program submitted pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), with certain conditions. This document provides final approval of the program and discussion of how California has met the conditions.

California has undertaken a number of actions to address the conditions of approval on its coastal nonpoint program by submitting the *Plan for California's Nonpoint Source Pollution Control Program*. Based on the information California has provided to document how the conditions have been met, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) find that California has satisfied all conditions of approval.

This document is largely organized in the same fashion as the Findings for California's coastal nonpoint program. However, it contains a section entitled *Overall Program Structure* that addresses several approval issues in light of the *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)* (NOAA and EPA, October, 1998). For further understanding of terms in this document and the basis for these decisions, the reader is referred to the *Final Administrative Changes* and the following documents:

Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (EPA, January 1993)
Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance (NOAA and EPA, January 1993)
Flexibility for State Coastal Nonpoint Programs (NOAA and EPA, January 1995)

FINAL APPROVAL DECISION

NOAA and EPA find that the State of California has satisfied all conditions placed on approval of the California coastal nonpoint program submitted to NOAA and EPA pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990. Therefore, California's coastal nonpoint program meets all program requirements and is hereby fully approved. This constitutes a final approval decision for the program.

Please note that the approval decision made for the California coastal nonpoint program does not relieve the State of any requirements under the Endangered Species Act.

ED465-000010715 EPA-6822_036747

OVERALL PROGRAM STRUCTURE

California has chosen to include the entire state in its coastal nonpoint program in order to both address requirements under Section 6217 and to update its Clean Water Act (CWA) Section 319 Nonpoint Source Program. The Plan for California's Nonpoint Source Pollution Control Program (Program Plan) describes how the State meets requirements under both CZARA Section 6217 and CWA Section 319. The statewide management area includes 1,609 miles of shoreline; more than 200,000 miles of rivers and streams; 1.6 million acres of lakes and reservoirs; 645,000 acres of estuaries, harbors, and bays; and 275,000 acres of wetlands. This large and diverse management area requires that the State address a wide range of complex nonpoint source pollution control issues across all source categories, including agriculture, hydromodification activities, forestry and urban runoff.

The California Coastal Commission (Coastal Commission) and the State Water Resources Control Board (State Board), in coordination with the nine Regional Water Quality Control Boards (Regional Boards), will function as the lead agencies for implementing the Program Plan.

The State Board and the Regional Boards are the State agencies with primary responsibility for coordination and control of water quality throughout California. The State Board provides program guidance and oversight, allocates funds, and reviews Regional Board decisions. In addition, the State Board allocates rights to the use of surface water. The Regional Boards have responsibility for water quality planning, permitting, inspection and enforcement actions within each of the nine hydrologic regions. The varied topography, precipitation patterns, population densities, and land use patterns throughout the State mean that water quality issues also vary widely. The Regional Boards were established in each of California's major watersheds to address the State's varying needs.

The Coastal Commission has primary responsibility for implementation of the California Coastal Act of 1976 (Coastal Act) and is the state coastal zone planning and management agency. The Coastal Commission certifies local coastal programs and approves, or hears appeal of, coastal development permits, energy projects, and federal projects within the coastal zone in accordance with the policies described in the Coastal Act. The Coastal Act includes policies which directly address nonpoint source pollution. The Coastal Commission protects water quality through the management of development that generates runoff, creates spills or otherwise affects water quality.

California's Program Plan includes the following elements:

- Adoption of the management measures (MMs).
- A commitment to implement all of the MMs within 15 years.
- A Memorandum of Understanding (MOU) between the Coastal Commission and the State Board regarding their commitment to serve as lead agencies for implementation of the Program Plan.

- A schedule to implement targeted MMs to be developed in three consecutive five-year plans.
- Tracking and evaluating program effectiveness through biennial and 5-year evaluations. Biennial evaluations will focus on assessing continuing implementation of MMs and activities identified in the five-year plans. At the end of each five-year period, the State will conduct an evaluation of how well performance measures and implementation goals identified in the 5-year plans have been met and assess mechanisms, including rulemaking, to improve program implementation.
- A description of the authority of the Coastal Commission, via the Coastal Act, and the State Board and the Regional Boards, via the Porter-Cologne Water Quality Control Act (Porter-Cologne), to implement the program throughout the State.
- Incorporation of additional State authorities into the Program Plan through MOUs and Management Agency Agreements (MAAs).

The State Board adopted the Program Plan on December 14, 1999 and the Coastal Commission did so on January 11, 2000.

Enforceable Policies and Mechanisms

Included in the *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance* is a three-part test for how NOAA and EPA intend to evaluate the inclusion of voluntary or incentive-based programs, backed by existing state enforcement authorities, in state coastal nonpoint pollution control programs. This includes:

1. A legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require MM implementation, as necessary;

2. A description of the voluntary or incentive-based programs, including the methods for tracking and evaluating those programs, the states will use to encourage implementation of the MMs; and

3. A description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary.

The following describes how California has met this test.

California's strategy to implement the Program Plan over 15 years is to use the Three-Tiered Approach under Porter-Cologne and the authority under the Coastal Act, along with other local and State authorities serving as additional enforceable authorities. As part of its Program Plan submittal, California has included legal opinions for both Porter-Cologne and the Coastal Act. These legal opinions address requirement (1) in the *Final Administrative Changes Guidance* described above.

State Board and Regional Board Authority
The legal opinion for Porter-Cologne certifies that the State Board and the Regional Boards have broad enforcement authority for sources related to agricultural activities, urban development, marinas, hydromodification, and wetlands, and that this authority applies to all state waters, including coastal waters. Porter-Cologne's authority is broad reaching in that, for example, State water quality control policies and State and regional water quality control plans made under it are binding on other State agencies, departments and boards, unless these agencies are otherwise directed or authorized by statute. Porter-Cologne can be used to ensure implementation of the MMs directly through waste discharge requirements (WDRs) for nonpoint sources and can also serve as a more general backup authority, therefore making it a powerful tool for implementation of the Program Plan. For more information on the authority of Porter-Cologne to ensure implementation of the MMs, see the State Board Chief Counsel's legal opinion (Appendix B of the Program Plan).

The Three-Tiered Approach utilizes three different approaches under Porter-Cologne to ensure water quality objectives are achieved. All three options use best management practices (BMPs) as the means for implementing the MMs.

- Tier 1 relies on the dischargers' self-determined (voluntary) implementation of BMPs. This self-determined approach allows landowners and resource managers to develop and implement their own solutions to nonpoint source problems before actions more regulatory in nature are taken. Regardless of the option chosen, landowners are still required to comply with the requirements of CZARA, the Clean Water Act and Porter-Cologne.

- Tier 2 is regulatory-based encouragement of BMPs. Under Tier 2 the State Board and the Regional Boards can "encourage" landowners to implement specific BMPs in two ways. First, the State Board and the Regional Boards can waive WDRs on the condition that dischargers comply with specific BMPs. Alternatively, where other agencies can require implementation of BMPs through their own authorities, the State Board and/or the Regional Boards can enter into agreements with those agencies to ensure BMP implementation.

- In Tier 3, the State Board and the Regional Boards adopt WDRs and can set waste discharge limitations at a level that, in practice, requires implementation of BMPs. For example, several Regional Boards have set WDRs for dairies that, in practice, require the implementation of BMPs related to the confined animal facilities MMs. In addition, WDRs can require a discharger to develop and implement a plan such as a stormwater pollution prevention plan, containing BMPs or other measures, to ensure compliance with applicable water quality standards. Tier 3 also includes a number of enforcement options for noncompliance. These include formal enforcement actions such as cleanup and abatement orders and cease and desist orders. Informal enforcement actions include notice of violation letters where a violation is brought to the discharger's attention and the

discharger is provided an opportunity to correct the violation before formal enforcement action is taken.

In general, the decision to use Tier 1, 2 or 3 depends upon factors such as:

- persistence of water quality impairments
- whether timely implementation of MMs and BMPs is being achieved
- whether the Tier 1 approach is being utilized effectively

In practice, the Regional Boards will determine which or what combination of the three options will be used to address any given nonpoint source problem. Sequential movement through the tiers (i.e., Tier 1 to Tier 2 to Tier 3) is not required. Depending upon the water quality impacts and severity of the nonpoint source problem, the Regional Boards may move directly to Tier 3 enforcement actions.

In addition to the Three-Tiered Approach, the recently passed California Water Code §13369 requires that the State Board and the Regional Boards further detail and formalize their approach to implementing the MMs by developing guidance for establishing a process by which they will enforce their authorities as outlined in the Program Plan. This guidance is to be completed by February 1, 2001.

California Coastal Commission Authority

The legal opinion for the Coastal Act concludes that the Coastal Commission has adequate legal authority under the Coastal Act to enforce water quality requirements related to nonpoint source pollution (see Appendix B of the Program Plan). A central focus of the Coastal Act is the protection, and where feasible, restoration of coastal water quality. The Coastal Act includes numerous enforceable policies that are directed toward that objective. On January 11, 2000, the Coastal Commission adopted a *Plan for Controlling Polluted Runoff* (CPR Plan), which describes how the Commission staff will implement the MMs. Actions identified in the CPR Plan have been incorporated into California's Program Plan. The CPR Plan and the legal opinion describe how the Coastal Commission will apply the Coastal Act's water quality policies through its three major regulatory tasks:

- The Coastal Commission reviews Local Coastal Programs (LCPs) and LCP amendments to determine if they are consistent with the Coastal Act's water quality policies before granting certification. To further detail the water quality requirements for LCPs, the Coastal Commission is developing a model "Nonpoint Source Element" and guidance for Coastal Commission and local government staffs to use when amending, updating, or preparing new LCPs.

- In areas of the coastal zone where there is no LCP or where the Coastal Commission retains original jurisdiction (i.e., tidelands, submerged lands and public trust lands), the Coastal Commission has the authority to issue coastal development permits. "Development" is defined quite broadly in the Coastal Act (see legal opinion for specific definition). In addition, local governments'

decisions concerning applications for coastal development permits may be appealed to the Coastal Commission in certain circumstances. Appeals can be filed by any applicant or aggrieved person who exhausted local appeals, or any 2 members of the Coastal Commission.[1] Grounds for appeal include an allegation that the development does not conform to the standards set forth in the LCP or the public access policies described in the Coastal Act. As with LCPs, the Coastal Commission has the authority to review these permit applications and appeals for consistency with Coastal Act's water quality policies (in the appeals case, as those policies are set forth in the LCP). In 1996, the Coastal Commission developed the *Procedural Guidance Manual: Addressing Polluted Runoff in the Coastal Zone (2nd Edition)* to provide guidance to the staff and Commission on how to apply Coastal Act water quality policies when reviewing permit applications and appeals. The Coastal Commission plans to update this manual in the coming year.

- The Coastal Commission applies the Coastal Act's water quality policies when reviewing activities conducted by the federal government, federally issued licenses and permits, plans for exploration and production on the outer continental shelf, and federally funded activities under the federal consistency provisions of the Coastal Zone Management Act of 1972.

In order to formalize the relationship between the lead agencies responsible for development and implementation of the Program Plan, the Coastal Commission and the State Board have signed an MOU that describes their respective roles, in cooperation with the Regional Boards, in implementing the Program Plan. The MOU includes, among other things, commitments by the Coastal Commission and the State Board to use their respective authorities to implement the Program Plan, track the implementation of MMs and to report biennially on program effectiveness. Reporting is an essential component to tracking in order to make available to the public information on the progress and performance of the program in meeting its objectives and performance measures.

Other State Authorities

While Porter-Cologne and the Coastal Act provide the primary authority needed to implement the Program Plan, other state agencies have additional enforceable authorities and programs that can be used to supplement these laws. For example, the Regional Boards, Department of Fish and Game, Department of Health Services, and Department of Toxic Substances Control all play an important role in regulating both the amount and type of wastes that enter California's waterways. In order to ensure that relevant state agencies fully participate in implementation of the Program Plan, the Secretaries of the California Environmental Protection Agency (Cal/EPA) and the California Resources Agency have signed a memorandum directing all departments and boards within their agencies, including the Regional Boards, to use their respective authorities to implement the Program Plan. This memorandum also directs these departments and boards to identify, through a five-year plan, appropriate actions to implement MMs for which they have

[1] California Coastal Commission Regulations, Subchapter 2, §13111(a)

authorities and which are targeted in the first Five-Year Implementation Plan, ensure that these actions are tracked, monitored and assessed, and consider the need to establish or revise existing formal agreements with the State Board and the Coastal Commission to ensure successful program implementation. Development of these State agency five-year plans will begin by July 1, 2000. In addition, the Secretaries have also signed a memorandum requesting the California Department of Transportation (Cal/Trans), Department of Food and Agriculture, and Department of Health Services to use their respective authorities to implement the Program Plan. This component of the Program Plan addresses requirement (3) in the *Final Administrative Changes Guidance* described above. Discussion of voluntary or incentive-based programs that address requirement (2) can be found in the source category discussions below.

In order to address the need for new or revised agreements to augment the primary authority, the Program Plan states that in 2000-2001, the State Board and the Coastal Commission will initiate reviews of existing MOUs/MAAs and will work with other agencies to identify opportunities for new agreements. By December 31, 2001, the State Board and the Coastal Commission will develop a schedule for updating or developing additional MOUs/MAAs that are necessary to fulfill the goals and objectives of the Program Plan. These agreements will include or reference specific, acceptable BMPs and their means of implementation. Through the Program Plan, the State Board and the Regional Boards have committed to updating existing agreements and seeking new ones that include specific BMPs to promote MM implementation. For example, the State Board is seeking to update its MAAs with the Department of Forestry and Fire Protection and the U.S. Forest Service to ensure implementation of forestry BMPs and MMs. The Program Plan also calls for updating existing agreements with the Department of Pesticide Regulation, Natural Resource Conservation Service and the Bureau of Land Management by December 31, 2001 to ensure that appropriate agriculture MMs are implemented through these agencies' programs and activities. In addition, Regional Boards will reference agreements between State Board and other state agencies in their basin plans, and this will become the primary basis of Regional Board determination of compliance with State requirements.

Adoption and Targeted Implementation of the Management Measures

The Program Plan includes the adoption of the MMs as goals by the lead agencies and allows for their adoption as regulation after each five-year cycle if adequate progress toward nonpoint source pollution control has not been demonstrated or if the goals of the Program Plan have not been achieved. The MMs are included as part of the Program Plan in *Volume II: California Management Measures for Polluted Runoff*. This component of the Program Plan describes the State's various programs and authorities and, in part, addresses requirement (2) in the *Final Administrative Changes Guidance* described in the *Enforceable Policies and Mechanisms* section above.

The *Final Administrative Changes Guidance* also says that states may use a targeted approach in order to establish priorities for implementing the MMs. The Program Plan outlines a targeted approach to implementing the MMs, with certain MMs being designated as primary, secondary or tertiary during a given 5-year implementation plan period. Although this approach targets certain MMs or source categories during each 5-year period, other efforts will be going on to

implement MMs throughout the State. In addition, many of the targeted MMs will require continued implementation beyond five years. Using this targeted approach, all MMs will be implemented within 15 years.

Tracking Implementation

The Program Plan also includes mechanisms to track and evaluate MM implementation through the program activities described in the five-year plans. The State will complete the five-year plan matrix by July 1, 2000, with numeric performance measures to be completed by October 1, 2000; and distribute the revised five-year plan to the public by November 1, 2000. The tracking program includes specific performance measures and goals, and additional measures and goals will be developed that can be used at the end of each five-year implementation period to determine the scope and extent of MM implementation. In order to ensure that all relevant State agency activities are tracked, the State will complete development of a database by August 1, 2001 that will enable State agencies to geographically track implementation of MMs and BMPs. This information will augment information already collected on watershed projects in California via the Natural Resources Project Inventory. At the end of each five-year cycle, a review will be conducted that will be comprehensive in scope, addressing all of the MMs throughout the 6217 management area. Success will be determined by:

- Degree to which performance measures have been met
- Geographic extent of MM implementation
- Selected evaluation of management practices used to implement the MMs
  Analysis of available water quality information in those areas where implementation has occurred

In cases where adequate progress in MM implementation has not been made, NOAA and EPA expect that the State will ensure successful implementation of specific MMs through rulemaking or other identified processes. Implementation of MMs in additional watersheds and water bodies will also take place as new geographic areas with nonpoint source pollution are identified and targeted.

In addition, progress and performance in meeting the objectives and performance measures noted in the 5-Year Implementation Plans will be determined and reported biennially. These biennial reviews will address such issues as progress in completing the activities identified in the five-year plans, performance of systems in place to track MM implementation, involvement of appropriate federal and state agencies in Program Plan implementation, funding for implementation of the Program Plan, and evaluation of overall program performance and the ability to implement all of the MMs by 2013. As part of the biennial review process, the State will hold public workshops to explain and respond to comments on progress with Program implementation.

Recent changes to State law now require reporting to the State Legislature on program monitoring and performance. By August 1, 2000 and each year thereafter, the State Board is to report to the Legislature on program results by submitting and making available to the public copies of and a summary of information in all State Board and Regional Board reports that

contain information related to nonpoint source pollution and that the State Board and the Regional Boards are required to prepare pursuant to the requirements of CWA Section 319 and CZARA Section 6217. By November 30, 2000 and annually thereafter until November 30, 2002, the State Board is to report to the State Legislature on the structure and effectiveness of its water quality program as it relates to Section 303(d) of the Clean Water Act. By November 30, 2000, the State Board is to assess and report on the State Board and Regional Boards' current surface water quality monitoring programs for the purpose of designing a proposal for a comprehensive surface water quality monitoring program for the State. By January 1, 2001, the State Board will prepare and submit to the Legislature a report that proposes implementation of a comprehensive program to monitor the quality of State coastal watersheds, bays, estuaries, and coastal waters and their marine resources for pollutants. As directed by the Legislature, the State has also completed an inventory of existing water quality and monitoring activities within State coastal watersheds, estuaries, bays, and coastal waters.

NOAA and EPA expect that the actions described in the Program Plan will be completed according to the schedule outlined in the Program Plan, including but not limited to the commitments to complete and distribute the first five-year plan by November 1, 2000 and prepare, circulate for public review and implement enforcement guidance.

BOUNDARY

In the Findings issued on June 30, 1998, it was found that California's boundary, which includes the entire State, is sufficient to control the land and water uses that have or are reasonably expected to have a significant impact on the coastal waters of California.

AGRICULTURE

CONDITION: Within two years, California will include in its program MMs in conformity with the 6217(g) guidance, other than for large and small confined animal facilities. Within one year, California will develop a strategy to implement MMs throughout the 6217 management area.

DECISION: California has satisfied this condition.

RATIONALE: As described in the *Overall Program Structure* section, California has adopted agriculture MMs in conformity with the 6217(g) guidance as goals. The agriculture MMs are described in the Program Plan's *Volume II: California Management Measures for Polluted Runoff*. In March 1998, California proposed to slightly modify the (g) guidance MMs for inclusion in the State's program. These included minor changes to the erosion and sediment control, grazing and confined animal facilities MMs and the addition of an Education and Outreach MM. NOAA and EPA have made a determination that these changes are consistent with the (g) guidance. In the conditional approval issued on June 30, 1998, NOAA and EPA found that California's program did include MMs for both large and small confined animal facilities. Porter-Cologne requires all animal facilities to implement standards consistent with

the confined animal facility MMs . The Regional Boards can waive requirements on an industry wide basis, but standards must be made a condition of the waiver.

The State will primarily use both the direct and backup authority of Porter-Cologne via the Three-Tiered Approach, as described in the *Overall Program Structure* section, to implement all of the agriculture MMs. The legal opinion for Porter-Cologne states that the Regional Boards clearly have the authority to regulate the discharge of pollutants from agricultural activities that can affect water quality. These include nutrients, sediments, animal wastes, salts, pesticides and habitat impacts due to grazing. In addition, the Regional Boards can regulate grazing or other agricultural activities that directly or indirectly cause the release of pollutants that can affect water quality.

The activities and authorities of other State agencies will also be used to supplement the authority of Porter-Cologne to implement the agriculture MMs. Other State agencies with a role in implementing the agriculture MMs include the Departments of Pesticide Regulation, Conservation, Fish and Game, and Food and Agriculture, among others. The memoranda from the Secretaries of Cal/EPA and the California Resources Agency described in the *Overall Program Structure* section direct or request these agencies to consider the need to establish or revise existing formal agreements with the State Board and the Coastal Commission to implement the MMs.

The agriculture MMs are targeted for primary implementation across all three Five-Year Plans. Examples of specific activities that will be undertaken to ensure that all of the agriculture MMs are implemented throughout the 6217 management area by 2013 include:

- The development of TMDLs related to agricultural nonpoint sources throughout the State. These include TMDLs for sedimentation, nutrients, pesticides, siltation, pathogens, etc. For example, in the first Five-Year Plan for agriculture, 33 water bodies are targeted for nutrient TMDLs by 2003.

- Coordination with the Monterey Bay National Marine Sanctuary Water Quality Protection Program to implement its Agriculture and Rural Lands Plan. The Plan outlines several strategies to address a wide range of agricultural sources of polluted runoff. For example, the six-county Central Coast Farm Bureau Coalition will take the lead in establishing networks of landowners and operators to improve soil and nitrate management practices, document their implementation, and develop water quality data which monitors their success.

- The development of regional numeric nutrient criteria by the Regional Boards in cooperation with the State Board and EPA. The criteria will be completed in 2000 and will be incorporated into Regional Board basin plans by 2003.

FORESTRY

In the Findings issued on June 30, 1998, it was found that California's program includes measures in conformity with the 6217(g) guidance and includes enforceable policies and mechanisms for implementation. However, it was also found that additional MMs were necessary in order to attain and maintain water quality standards. See the *Additional Management Measures* section on page 23 for a discussion of how California has met the additional MMs condition with respect to forestry.

As always, please see the document *Findings for the California Coastal Nonpoint Program (June 30, 1998)* for more information.

In March 1998, California proposed to slightly modify the (g) guidance MMs for inclusion in the State's program. These included minor changes to the timber harvesting MM and the addition of an education/outreach MM. NOAA and EPA have made a determination that these changes are consistent with the (g) guidance.

URBAN

A. New Development, Watershed Protection, Existing Development, Site Development, Construction Site Erosion and Sediment Control, Construction Site Chemical Control, New and Operating Onsite Disposal Systems, and Pollution Prevention

B. Roads, Highways and Bridges

CONDITION: Within two years, California will include in its program MMs in conformity with the 6217(g) guidance. Within one year, California will develop a strategy to implement these MMs throughout the 6217 management area.

DECISION: California has satisfied this condition.

RATIONALE: As described in the *Overall Program Structure* section, California has adopted urban MMs in conformity with the 6217(g) guidance as goals. The urban MMs are described in the Program Plan's *Volume II: California Management Measures for Polluted Runoff*. In 1998, California proposed to slightly modify the (g) guidance MMs for inclusion in the State's program. These included minor changes to the watershed protection, construction site chemical control, construction site erosion and sediment control, new onsite disposal systems, and pollution prevention MMs. NOAA and EPA have made a determination that these changes are consistent with the (g) guidance.

EPA and NOAA have determined that the National Pollutant Discharge Elimination System (NPDES) Stormwater Program Phase II meets the enforceable policies and mechanisms component of the condition with respect to construction site erosion and sediment control.

The State will primarily use both the direct and backup authority of Porter-Cologne via the Three-Tiered Approach, as described in the *Overall Program Structure* section, to implement all of the urban MMs. The legal opinion for Porter-Cologne states that the Regional Boards have the authority to regulate the discharge of pollutants from urban activities that can affect water quality. These include sediments, nutrients, oxygen-demanding substances, pathogens, salts, hydrocarbons, heavy metals, and toxic substances. For example, the State Board and the Regional Boards have already adopted NPDES permits for some types of urban runoff. In addition, the State Board and the Regional Boards can use their planning authority to address urban runoff on a watershed basis.

As described in the *Overall Program Structure* section, the Coastal Act provides the Coastal Commission with broad authority to implement the urban MMs in the coastal zone through the review and certification of LCPs and LCP amendments, and the review of coastal development permit applications. The Coastal Commission can also use its federal consistency authority under the Coastal Zone Management Act of 1972 to implement the MMs. The legal opinion submitted by the Coastal Commission notes that the Coastal Act's definition of development is quite broad and includes "the placement or erection of any solid material or structure; discharge of any dredged material or of an gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land; ...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure,..."[1] among others. The term "structure" includes, but is not limited to, "any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, electrical power transmission, and distribution line."[2]

Currently, Coastal Commission staff are routinely requesting that applicants for coastal development permits not already subject to NPDES permit requirements to submit Erosion and Sediment and Chemical Control Plans for the construction phase, when appropriate. In addition, a polluted runoff control plan with regular BMP maintenance and inspection is required of most development proposals. As noted in the *Overall Program Structure* section, the Coastal Commission is developing a Nonpoint Source Element for LCPs and updating its *Procedural Guidance Manual: Addressing Polluted Runoff in the Coastal Zone* to further detail its authority to implement the urban measures.

In addition to its regulatory authority, the Coastal Commission also implements educational and technical assistance programs and coordinates with other agencies to address land use and development activities that may generate polluted runoff. For example, the Coastal Commission, in coordination with the Monterey Bay National Marine Sanctuary, the Central Coast Regional Board, and the Cities of Monterey and Santa Cruz, has developed the Model Urban Runoff

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[1]Memorandum from Ralph Faust, Chief Counsel, and Dorothy Dickey, Deputy Chief Counsel, of the California Coastal Commission on the Enforceability of Nonpoint Source Pollution Control Program (California Coastal Act legal opinion)

[2]Id.

Program (MURP). MURP is a how-to guide for local governments to address polluted runoff in urban areas. The Coastal Commission plans to distribute the MURP manual to all local governments with LCPs and is participating in a project with the City of Watsonville to develop an urban runoff program for the city using the MURP manual.

The activities and authorities of other State agencies will also be used to supplement the authority of Porter-Cologne to implement these urban MMs. Other State agencies with a role in implementing the urban MMs include the San Francisco Bay Conservation and Development Commission, Department of Water Resources, Cal/Trans and the Department of Parks and Recreation, among others. The memoranda from the Secretaries of Cal/EPA and the California Resources Agency described in the *Overall Program Structure* section direct or request these agencies to consider the need to establish or revise existing formal agreements with the State Board and the Coastal Commission to implement the MMs. The Program Plan's first Five-Year Plan describes plans to develop a Memorandum of Agreement between public agencies that use onsite disposal systems (e.g., Cal/Trans, the Department of Parks and Recreation, Department of Corrections) and the State Board, Regional Boards, and local health departments to ensure that public facilities meet the same technical standards and achieve the same level of scrutiny as other onsite disposal systems.

The urban MMs are targeted for primary implementation in the second (2003-2008) and third (2008-2013) Five-Year Plans. However, the State will continue several ongoing activities to implement these measures, including NPDES Phases I & II, LCP amendments, coastal development permits, the Cal/Trans Stormwater Permit, and the MURP program described above. Examples of specific activities that will be undertaken to ensure that all of the urban MMs are implemented throughout the 6217 management area by 2013 include:

- Establish uniform statewide standards for minimum criteria for onsite disposal systems siting and design.
- Conduct more intensive site-specific evaluations of impacts of Cal/Trans and local government road maintenance practices.
- Incorporate applicable MMs into NPDES permits as they come up for renewal.
- Incorporate applicable MMs into Urban TMDL development strategies and implementation plans.
- Pursue changes to the Checklists in Appendices G and H of the California Environmental Quality Act (CEQA) guidelines to address and identify polluted runoff as a significant environmental effect.

MARINAS AND RECREATIONAL BOATING

CONDITION: Within two years, California will include in its program MMs in conformity with the 6217(g) guidance. Within one year, California will develop a strategy to implement the MMs throughout the 6217 management area.

DECISION: California has satisfied this condition.

RATIONALE: As described in the *Overall Program Structure* section, California has adopted marinas and recreational boating MMs in conformity with the 6217(g) guidance as goals. The marinas and recreational boating MMs are described in the Program Plan's *Volume II: California Management Measures for Polluted Runoff*. In March 1998, California proposed to slightly modify the (g) guidance MMs for inclusion in the State's program. These included minor changes to the marina flushing, water quality assessment, habitat assessment, shoreline stabilization, stormwater runoff, fuel station design, sewage facility, solid waste, liquid material, boat cleaning, maintenance of sewage facilities, and public education MMs and the addition of a solid waste/liquid material facilities MM. NOAA and EPA have made a determination that these changes are consistent with the (g) guidance.

The State will primarily use both the direct and backup authority of Porter-Cologne via the Three-Tiered Approach, as described in the *Overall Program Structure* section, to implement all of the marinas and recreational boating MMs throughout the 6217 management area. Due to the broad definition of "waste" in Porter-Cologne, the State Board and the Regional Boards can regulate any pollutants from marinas that enter surface waters through boat discharges, spills or storm water runoff. Shoreline erosion caused by the construction or expansion of a marina is also subject to regulation as a waste discharge because the activity causes the release of sediments. In addition, State law (Harb. and Nav. Code §§775-786) specifically authorizes the Regional Boards to require marinas to install vessel pumpout facilities and requires that these pumpout facilities be operated and maintained to prevent sewage discharges into State waters. The State Board and the Regional Boards can also use their planning authority under Porter-Cologne to address any marina or boating activities that affect water quality but do not involve a waste discharge. For example, they could address the operation and maintenance MMs in a water quality control plan and include recommendations for appropriate actions by affected agencies. The Coastal Commission can address the marina flushing MM through its authority to permit the development of new marinas.

An example of a voluntary program to implement the marinas and recreational boating measures is the Coastal Commission's grant-funded Boating Clean and Green Campaign, which includes facilitation of the California Clean Boating Network (CCBN) as a forum to conduct public outreach, manage marine and boating impacts, and participate in the development and implementation of MMs and nonpoint source program strategies and action plans. Membership in the CCBN includes government, environment and business organizations and boaters. Establishment of the California Clean Boating Network was a recommendation of the Marina and Recreational Boating Technical Advisory Committee (TAC). Examples of CCBN activities include:

- Sharing information and developing expertise on current environmentally sound boating issues.
- Identifying funding sources for marina and boater pollution education projects.
- Providing a forum to allow cooperation on funding source proposals.
- Sharing methodology for education, outreach, and the evaluation of materials.

The activities and authorities of other State agencies will also be used to supplement the authority of Porter-Cologne to implement the marinas and recreational boating MMs. Other State agencies with a role in implementing the marinas and recreational boating MMs include, among others, the Department of Boating and Waterways, the San Francisco Bay Conservation and Development Commission, the State Lands Commission, and the Department of Health Services. The memoranda from the Secretaries of Cal/EPA and the California Resources Agency described in the *Overall Program Structure* section direct or request these agencies to consider the need to establish or revise existing formal agreements with the State Board and the Coastal Commission to implement the MMs. Specific agreements that are targeted in the first Five-Year Plan include an agreement between the State Board, Regional Boards and the Department of Boating and Waterways to establish minimum standards for the number of sewage facilities at marinas. Over the next two years, the State also plans to develop agreements between the Regional Boards and local health departments regarding responsibility for inspection of pump out facilities, as recommended by the Marinas and Recreational Boating TAC.

The marinas and recreational boating MMs are mostly targeted for primary implementation in the second (2003-2008) and third (2008-20013) Five-Year Plans. The first Five-Year Plan targets six of these MMs as primary. Examples of specific activities that will be undertaken to ensure that all of the marinas and recreational boating MMs are implemented throughout the 6217 management area by 2013 include:

- Developing model ordinances and training local law enforcement on boat cleaning and maintenance.
- Implementing short course hull-cleaning training and certification programs and policies using a two tiered system, where Tier 1 is a self-certification program approved by the State Board and the Coastal Commission with specific targets and Tier 2 is regional certification if the self-certification program fails to meet identified targets.

HYDROMODIFICATION

CONDITION: Within two years, California will include in its program MMs in conformity with the 6217(g) guidance. Within one year, California will develop a strategy to implement the MMs throughout the 6217 management area.

DECISION: California has satisfied this condition.

RATIONALE: As described in the *Overall Program Structure* section, California has adopted hydromodification MMs in conformity with the 6217(g) guidance as goals. The hydromodification MMs are described in the Program Plan's *Volume II: California Management Measures for Polluted Runoff*. In 1998, California proposed to slightly modify the (g) guidance MMs for inclusion in the State's program. These included minor changes to the channelization and channel modification and streambank and shoreline erosion MMs and addition of an educational programs MM. NOAA and EPA have made a determination that these changes are consistent with the (g) guidance.

The State will primarily use both the direct and backup authority of Porter-Cologne via the Three-Tiered Approach, as described in the *Overall Program Structure* section, to implement all of the hydromodification MMs throughout the 6217 management area. Under Porter-Cologne, the Regional Boards can regulate any channelization or channel modification projects that cause a waste discharge. Similarly, they can regulate any activities that can cause streambank or shoreline erosion, resulting in the release of sediments or other wastes into State waters. The State Board can also condition a section 401 water quality certificate for a federally permitted activity involving a surface water discharge to address both the activity's point and nonpoint source impacts. The State Board and the Regional Boards can address any other activities that affect water quality, but do not entail a waste discharge, under their broad planning authority.

The activities and authorities of other State agencies will also be used to supplement the authority of Porter-Cologne to implement the hydromodification MMs. Other State agencies with a role in implementing the hydromodification MMs include the State Coastal Conservancy, the San Francisco Bay Conservation and Development Commission, the Department of Water Resources and the Department of Fish and Game, among others. The memoranda from the Secretaries of Cal/EPA and the California Resources Agency described in the *Overall Program Structure* section direct or request these agencies to consider the need to establish or revise existing formal agreements with the State Board and the Coastal Commission to implement the MMs. During the first Five-Year Plan, the State plans to establish formal agreements between agencies in order to streamline permitting processes and better protect resources.

The hydromodification MMs are mostly targeted for primary implementation in the second (2003-2008) and third (2008-20013) Five-Year Plans. Examples of specific activities that will be undertaken to ensure that all of the hydromodification MMs are implemented throughout the 6217 management area by 2013 include:

- Adopting general WDRs that prescribe management practices for various channel maintenance activities and initiating enforcement actions, where necessary.

- Providing incentives for flood management approaches that minimize the need for channelization and channel hardening.

- Incorporating into the Los Angeles Basin Contaminated Sediments Task Force efforts all applicable State nonpoint source strategies to prevent and control polluted runoff.

WETLANDS, RIPARIAN AREAS, AND VEGETATED TREATMENT SYSTEMS

CONDITION: Within two years, California will include in its program MMs in conformity with the 6217(g) guidance for the protection of wetlands and riparian areas. Within one year, California will develop a strategy to implement the MMs throughout the 6217 management area.

DECISION: California has satisfied this condition.

RATIONALE: As described in the *Overall Program Structure* section, California has adopted wetlands, riparian areas, and vegetated treatment systems MMs in conformity with the 6217(g) guidance as goals. These MMs are described in the Program Plan's *Volume II: California Management Measures for Polluted Runoff.* California has also proposed to add an education/outreach MM to the State's program.

The State will primarily use both the direct and backup authority of Porter-Cologne via the Three-Tiered Approach, as described in the *Overall Program Structure* section, to implement all of the wetlands, riparian areas, and vegetated treatment systems MMs throughout the 6217 management area. Under Porter-Cologne, the Regional Boards can regulate any activities that result in a waste discharge to wetlands or riparian areas. Where waste discharges have adversely affected wetland areas, they can issue enforcement orders requiring restoration. The Regional Boards can also promote the protection and restoration of wetlands and the use of engineered vegetated treatment systems as supplemental environmental credit projects mitigating administrative civil liability assessments. The State Board and the Regional Boards can use their broad planning authority to address the protection and restoration of wetlands and to promote the use of vegetated treatment systems.

The activities and authorities of other State agencies will also be used to supplement the authority of Porter-Cologne to implement the wetlands, riparian areas and vegetated treatment systems MMs. Other State agencies with a role in implementing these MMs include the State Coastal Conservancy, the State Lands Commission, the Department of Fish and Game, the Department of Parks and Recreation, the San Francisco Bay Conservation and Development Commission, and Wildlife Conservation Board, among others. The memoranda from the Secretaries of Cal/EPA and the California Resources Agency described in the *Overall Program Structure* section direct or request these agencies to consider the need to establish or revise existing formal agreements with the State Board and the Coastal Commission to implement the MMs.

The wetlands, riparian areas, and vegetated treatment systems MMs are mostly targeted for primary implementation in the second (2003-2008) and third (2008-20013) Five-Year Plans. Examples of specific activities that will be undertaken to ensure that all of the wetlands, riparian areas, and vegetated treatment systems MMs are implemented throughout the 6217 management area by 2013 include:

- Develop CEQA guidelines for wetlands and watershed analysis.
- Participate in regional flood plain planning activities, such as the Bay Area Wetlands Planning Group.

ADMINISTRATIVE COORDINATION

CONDITION: Within one year, California will include in its program mechanisms to improve coordination among State agencies and between State and local officials with a role in the implementation of the coastal nonpoint program.

DECISION: California has satisfied this condition.

As noted in the *Overall Program Structure* section, the Secretaries of Cal/EPA and the California Resources Agency have signed a memorandum directing all departments and boards within their agencies, including the Regional Boards, to use their respective authorities to implement the Program Plan. This memorandum requires each board or department to designate a lead staff person to be responsible for coordinating with State Board and Coastal Commission staff on nonpoint source issues and to consider the need to establish or revise existing formal agreements with the State Board and the Coastal Commission to ensure successful implementation of the Program Plan. The Secretaries have also signed a second memorandum requesting that the Department of Food and Agriculture, Department of Health Services, and Cal/Trans undertake these activities, as well. The Program Plan also includes the development of a schedule to update existing MOUs/MAAs and establish new ones where necessary to ensure that the goals and objectives of the Program Plan are fulfilled.

Also as described in the *Overall Program Structure* section, the State Board and the Coastal Commission have signed an MOU describing their respective roles as lead agencies, in coordination with the Regional Boards, in implementing the Program Plan. This MOU describes specific coordination responsibilities of these agencies, including:

- Implementing and tracking implementation of MMs and management practices related to nonpoint source pollution prevention and control.
- Improving communication through State Board staff and Regional Board staff consultation with Coastal Commission staff regarding nonpoint source projects. implemented or ordered by the State Board or a Regional Board requiring a coastal development permit issued or reviewed by the Coastal Commission. Conversely, Coastal Commission staff will consult with State Board and Regional Board staffs regarding any of their projects that require State Board approval.
- Meeting on a regular basis to discuss program implementation.
- Working cooperatively in the budget process to support nonpoint source program activities.

The State has taken several important actions in order to address the condition regarding administrative coordination. As recommended in the *Findings for the California Coastal Nonpoint Program (June 30, 1998)*, the State will re-activate the Interagency Coordinating Council to provide a regular working forum to collaborate on implementation and problem solving. The Interagency Coordinating Council will serve as the primary forum for coordinating program activities of lead and other state agencies involved in program implementation. The

Interagency Coordinating Council will also establish Technical Advisory Committees (TACs) in assessment, technical assistance, education, and regulation. These TACs will identify opportunities for improved coordination and mechanisms to improve program effectiveness within their respective areas. The Interagency Coordinating Council will also provide opportunities for public participation.

In addition, a collaborative relationship is being developed among the lead agencies, the Interagency Coordinating Council and the California Biodiversity Council. The latter council was formed to improve coordination and cooperation among the various resource management and environmental protection agencies at federal, State, and local levels.

The staffs of the State Board, the Regional Boards, and the Coastal Commission will also work with watershed groups, local governments and others to encourage collaborative relationships and to promote coordinated resource management and planning. The Program Plan identified a number of specific watershed efforts that the lead agencies are currently working on or will over the course of Program Plan implementation. These include the Monterey Bay National Marine Sanctuary Water Quality Protection Program and the CALFED Bay Delta Initiative, among others.

PUBLIC PARTICIPATION

In the Findings issued on June 30, 1998, it was found that California's program provides opportunities for public participation in the development and implementation of the coastal nonpoint program. Please see the document *Findings for the California Coastal Nonpoint Program (June 30, 1998)* for more information.

NOAA and EPA expect that the State will provide opportunities for broad public participation in the Program, as stated in the *Findings for the California Coastal Nonpoint Program (June 30, 1998)*. In the Program Plan, the State has committed to a number of public participation efforts, including, but not limited to, the following:

- public review of the draft enforcement guidance
- public biennial reviews and workshops
- public reviews at the end of each five year plan implementation period
- public involvement with the Interagency Coordinating Council
- public document production by August 1 of each year, pursuant to Water Code §13369

TECHNICAL ASSISTANCE

CONDITION: Within three years, the State will develop programs or expand existing programs to provide technical assistance to local governments and the public for implementing additional management measures.

DECISION: California has satisfied this condition.

RATIONALE: The Program Plan outlines several objectives for the State's program to provide technical assistance to local governments and the public in assessing watershed conditions and implementing applicable MMs to address identified problems. Specific objectives include:

- Conducting an ongoing assessment of training and technical and financial assistance needs.
- Providing for the transfer of information on technical and financial assistance including available tools, training courses, grant and loan opportunities, and contact information
- Improving technical tools.
- Providing technical training for resource managers, landowners and land operators, and the public.

In addition to technical assistance, the State will provide financial assistance for on-the-ground implementation of MMs and management practices for each source category (i.e., agriculture, forestry, urban, marinas, hydromodification, and wetlands). The State is currently providing funding for nonpoint source pollution prevention and reduction efforts in forestry, hydromodification, agriculture, and wetlands/riparian areas.

The coastal nonpoint program will also support technical and financial assistance efforts within other agencies, such as those involved with the CCBN and San Diego Safe Boating and Environmental Coalition's efforts to provide education technical assistance regarding environmentally sound boating.

Specific examples of technical assistance activities that are identified in the Program Plan include the following:

- By 2002, the State Board will develop a technical assistance program that will assist local governments and small businesses with guidelines for designing projects that avoid wetlands and riparian areas. This program will include guidelines for the Regional Boards and local governments on BMPs, model ordinance provisions, and methods of establishing setbacks.

- The State Board will also provide up-to-date technical information on: flood management methods which preserve natural riparian values, construction and long-term maintenance costs of traditional versus alternative flood management approaches, setbacks in flood plains and designating floodways, and examples of existing ordinances and policies which minimize the need for channelization and channel hardening.

- The Coastal Commission, in coordination with the CCBN, will develop and regularly maintain a "clearinghouse" of boat cleaning and maintenance information, such as boat cleaning and maintenance BMPs and guidance on how to comply with local, State and federal laws and regulations.

CRITICAL COASTAL AREAS

CONDITION: Within one year, California will revise its process to provide for the identification of critical coastal areas beyond the existing coastal zone boundary and within watersheds draining into Monterey Bay.

DECISION: California has satisfied this condition.

RATIONALE: The State will use a combination of approaches to designate critical coastal areas, which will include areas beyond the existing coastal zone boundary and within watersheds draining into Monterey Bay. As part of its critical coastal area strategy, the State will first designate special areas within the coastal zone as critical coastal areas. These include Environmentally Sensitive Habitat Areas currently designated in California's coastal zone management program, Areas of Special Biological Significance, California's National Estuarine Research Reserves, National Estuary Program sites, and National Marine Sanctuaries (including the Monterey Bay National Marine Sanctuary). Critical coastal area watersheds will be mapped, including corresponding:

- Areas of regional significance
- Special coastal habitats not a priority within other sections of the Program Plan
- Coastal and ocean waters threatened by reasonably foreseeable increases in pollution loading
- Coastal and ocean waters not meeting water quality standards
- Coastal and ocean waters designated to prohibit the degradation of water quality
- Pristine coastal waters

Within critical coastal areas, the Coastal Commission will use its existing authority under the California Coastal Management Program to ensure that all appropriate MMs are implemented and, where appropriate, that additional MMs are developed to protect these coastal waters (see *Additional Management Measures* section of this document for more information). Adjacent portions of the inland watersheds that impact processes within the coastal zone will also be protected through the coordination of State agency and public actions. Critical coastal area designation is a continuing process; therefore sensitive habitats that may become threatened by new or expanding development can be targeted in the future. The critical coastal area list and associated watersheds information will be updated at least every two years by the appropriate agencies.

In order to identify and coordinate the actions within critical coastal areas, the State will establish an interagency committee (Critical Coastal Area Committee) to identify critical coastal areas and develop additional MMs to protect these areas. The committee will develop criteria for identifying critical coastal areas. An initial list of critical coastal areas where targeted implementation of MMs will occur will be developed by December 31, 2000. The committee will be lead by the Coastal Commission in coordination with the State Board, State Coastal Conservancy, the six coastal Regional Boards, and the public.

ADDITIONAL MANAGEMENT MEASURES

CONDITION: Within two years, California will include in its program a process for developing and revising MMs to be applied to critical coastal areas and in areas where necessary to attain and maintain water quality standards. Within one year, the State will identify additional MMs for forestry necessary to attain and maintain water quality standards.

DECISION: California has satisfied this condition.

RATIONALE: Section 6217 recognizes that implementation of the (g) management measures alone may not always be adequate to protect water quality from nonpoint sources of pollution. In these cases, Section 6217 requires the identification and implementation of additional MMs to attain and maintain water quality standards. The development and implementation of additional MMs is a continual process, which includes developing, implementing (including milestones for implementing), evaluating, and, as necessary, revising additional MMs.

In developing the Program Plan, California has developed a process for identifying additional MMs that relies on identifying and implementing new measures, and on more fully implementing existing measures. The process identified by California includes, among other activities:

- Identifying an initial set of additional MMs that are applicable for implementation in California.
- Involving key agencies through the Interagency Coordinating Committee to identify and recommend additional MMs.
- Developing a process for identifying and implementing additional MMs to address "additional" pollutant sources (e.g., resource extraction and abandoned mines, pitch canker (forestry), water conservation, and aerial deposition).
- Tracking MM implementation and assessing effectiveness.
- Ensuring public participation in developing and implementing additional MMs.
- Providing for more extensive implementation of existing MMs when necessary to restore and protect water quality, through the potential use of more stringent approaches such as additional regulations.

Through the Critical Coastal Area Committee described under *Critical Coastal Areas*, the State will review the effectiveness of existing MMs for all potential sources in critical coastal areas and develop additional MMs when needed to provide increased protection to critical coastal areas from nonpoint source pollution degradation. The Critical Coastal Area Committee will work with appropriate agencies and researchers to develop these MMs with special considerations for the physical and biological characteristics of the critical coastal areas and the nature of contamination in the adjacent threatened or impaired coastal waters. For portions of critical coastal areas within the coastal zone, the Coastal Commission will include additional MMs, when appropriate, in future coastal development permits and LCP amendments associated with these areas.

In addition to including in its program a process to develop and revise additional MMs, the State has addressed the need to identify additional MMs for forestry through amendments to the Forest Practice Rules (FPRs). The *Findings for the California Coastal Nonpoint Program* issued in June 1998 stated that California will need to adopt additional measures for forestry to address waters that are not attaining or maintaining applicable water quality standards or protecting beneficial uses, or that are threatened by reasonably foreseeable increases in pollutant loadings from new or expanding forestry operations. In a letter dated April 22, 1999 from EPA, Region 9 to the Board of Forestry and Fire Protection (BOF), the California Department of Forestry and Fire Protection (CDF), and the State Board, EPA identified the following priority areas where existing MMs should be improved: (1) mass wasting, (2) cumulative watershed effects, (3) monitoring, (4) watercourse and lake protection zones, (5) roads, and (6) exemption and exception provisions.

On March 11, 1998, the State entered in a Memorandum of Agreement with the National Marine Fisheries Service (NMFS) which called for the review and revision of California's FPRs, and a review of their implementation and enforcement by January 1, 2000. NMFS regarded full implementation of these provisions within the specified time frame to be essential for achieving required habitat conditions for anadromous salmonids. The *Federal Register* notice for the recent proposed listing of Northern California Steelhead (65 Fed. Reg. 6960, February 11, 2000) describes the outcome of this effort to amend the FPRs:

> In accordance with the NMFS/California MOA, a scientific review panel was established by the State to review the California FPRs, including their implementation and enforcement. The scientific review panel completed its review and provided the State's Board of Forestry with its findings and recommendations in June 1999. In its findings, the review panel concluded that California's FPRs, including their implementation through the existing timber harvest plan process, do not ensure protection of anadromous salmonid habitat and populations. To address these shortcomings, and as specified in the NMFS/California MOA, the California Resources Agency and Cal/EPA jointly presented the Board of Forestry with a proposed rule change package in July 1999. Following several months of public review, the Board of Forestry took no action on the package in October 1999, thereby precluding any possibility of implementing improvements in California's FPRs by January 1, 2000, as the State committed to do in the NMFS/California MOA.[1]

Because these critical conservation measures are not being implemented by the State of California, the current FPRs fail to provide the protections NMFS has determined are necessary for anadromous salmonids.

On March 14, 2000, NMFS recommended that the BOF adopt a set of proposed changes that would be implemented July 1, 2000. Although NMFS recognized that passage of the rules would

[1] 65 Fed. Reg. 6961

not make the FPRs compliant with the federal Endangered Species Act and EPA recognized that the proposed rules would not address all of the issues identified in its April 1999 letter, both NMFS and EPA concluded that small incremental improvements were nevertheless desirable. While the BOF failed to adopt most of the proposed changes, it did adopt some of them. These interim rules will likely provide some slight improvements to water quality. In addition, the five-year plan for forestry described in the Program Plan includes plans for adopting FPRs to address watercourse and lake protection zones, roads and landings, exempt and emergency timber operations, mass wasting, and cumulative watershed effects by 2001.

The State has also taken several actions that could result in improved implementation of the FPRs. In order to assist in implementation and enforcement of the FPRs, the State has added 71 new field positions for the North Coast and recent State legislation has given CDF new civil administrative authority to impose penalties. Additional actions to improve implementation include the issuance of an interim report from the Monitoring Study Group (recently recognized as a formal Committee of the BOF) on the Hillslope Monitoring Program. The program is designed to determine the extent to which the FPRs affecting water quality are being properly implemented and whether the rules are effective when properly implemented. The interim report identifies key areas where improved implementation of the FPRs is needed. The five-year plan for forestry noted above also includes plans to increase agency staffing, broaden enforcement authority, increase review of timber harvest plans, and monitor effectiveness of management practices by 2003.

The State is also developing Total Maximum Daily Loads (TMDLs) that address forestry related effects on water quality. The Program Plan indicates that TMDLs "will provide a more detailed approach to ensuring the implementation of the appropriate nonpoint source MMs and will provide a better framework for 'triggering' more stringent implementation." Thirty-eight (38) water body segments in coastal watersheds of northern California have been identified as impaired (many for forestry-related impacts) and have been scheduled for development of TMDLs.

The BOF and the CDF have a key role in successfully accomplishing this plan as formalized in an 1988 Management Agency Agreement (MAA) between the State Board and the BOF/CDF. The State should accelerate efforts to review and revise this MAA to facilitate successful implementation. The Program Plan indicates that beginning in 2000, the State Board will begin to revise the Water Quality Management Plan under a corresponding MAA with the U.S. Forest Service.

The State's inclusion in its program of a process for developing and revising MMs, its issuance of FPR amendments on an interim basis, its commitment to continue the FPR amendment process, and ongoing efforts to improve implementation are sufficient to address the condition for approval of the State's Coastal Nonpoint Program. However, additional MMs must be adopted and implemented to adequately address water quality concerns. NOAA and EPA encourage the State to adopt new FPRs in order to meet water quality standards and protect anadromous salmonid populations, and to continue its efforts to improve implementation of the

existing rules. To meet this need, the State must continue to coordinate with NMFS to ensure that revisions to the FPRs meet the requirements of the federal Endangered Species Act to ensure the protection of salmonids consistent with the 1998 Memorandum of Agreement between the State and NMFS. The decisions in this document on conditions of approval do not relieve the State of its responsibilities to comply with the federal Endangered Species Act.

MONITORING

CONDITION: Within one year, California will include in its program a plan that enables the State to assess over time the extent to which implementation of the MMs is reducing pollution loads and improving water quality.

DECISION: California has satisfied this condition.

RATIONALE: As described in the *Overall Program Structure* section, the State has developed a plan for tracking and evaluating MM implementation. The State will monitor the effectiveness of the MMs in reducing pollution loads and improving water quality. The State Board has executed a contract with the University of California-Davis to develop a long-term, comprehensive monitoring program to assess MM effectiveness. This program will include:

- Establishing criteria to assess the functioning of management practices in implementing the MMs.
- Developing pollution control success criteria and monitoring practices in each major nonpoint source pollution category (i.e., agriculture, forestry, urban, marinas, and hydromodification). These criteria will be tested this year during the pilot phase of the monitoring program. The results of this pilot phase (Functioning Assessment Criteria Test) will be used to develop a broader, long-term effectiveness monitoring program.
- Long-term monitoring in at least one watershed within the jurisdiction of each of the nine Regional Boards.
- Integrating nonpoint source monitoring with other monitoring programs, including citizen monitoring programs.
- Reporting monitoring information to the public.

During the pilot phase, ongoing effectiveness monitoring programs throughout the State will be evaluated for incorporation into the long-term monitoring strategy. The Assessment TAC of the Interagency Coordinating Council will focus on improving coordination among these monitoring programs. The State Board and the Regional Boards will continue coordination within their agencies and work with existing monitoring programs (e.g., the Central Coast Regional Monitoring Program and TMDL monitoring) to ensure successful implementation of the long-term monitoring strategy.

In addition, the State will promote volunteer monitoring programs among landowners, farmers, ranchers, and community members to evaluate the effectiveness of their practices to implement the MMs and, where necessary, modify these practices. The State Board will work to improve

community-based monitoring efforts by developing and reviewing new methods for monitoring MM implementation and effectiveness, disseminating quality assurance requirements, and increasing training opportunities. The State Board and the Regional Boards will continue to support regional steering committees that foster partnerships among local, State, and federal governments and business, industry and volunteer groups.

The State will report on the effectiveness of the monitoring strategy through the biennial reporting process discussed in the *Overall Program Structure* section, semi-annual performance reports to EPA, and the annual progress report on nonpoint source programs and projects funded under CWA Section 319(h). Information generated from monitoring programs will also be made available on the "System for Water Information Management" that is being developed by the State Board.