

MEMORANDUM OF AGREEMENT

BETWEEN

THE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,

THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY,

THE  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE  
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD,

THE  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
CENTRAL COAST REGION,

THE  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
SAN FRANCISCO BAY REGION,

THE  
CALIFORNIA COASTAL COMMISSION,

AND THE  
ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS

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## I. PURPOSE OF MOA

The purpose of this Memorandum of Agreement (MOA) is to provide an ecosystem based water quality management process that integrates the mandates and expertise of existing coastal and ocean resource managers and protects the nationally significant resources, qualities and compatible uses of the Monterey Bay National Marine Sanctuary (Sanctuary or MBNMS).

## II. AUTHORITY

### A. NOAA

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, (MPRSA), 16 U.S.C. §§ 1431 et seq., National Program Regulations at 15 CFR Part 922 and the Monterey Bay National Marine Sanctuary regulations at 15 CFR Part 944 as administered by the National Oceanic and Atmospheric Administration (NOAA).

### B. U.S. EPA

The Federal Water Pollution Control Act, as amended, (Federal Water Pollution Control Act or Clean Water Act (CWA)), 33 U.S.C. §§ 1251 et seq., gives the U.S. Environmental Protection Agency (U.S. EPA) authority to regulate both point and non-point (e.g., stormwater) sources of pollution. In addition, title I of the MPRSA (33 U.S.C. §§ 1401 et seq.) section 102 gives U.S. EPA authority to permit non-dredged material for the purpose of dumping into marine waters.

### C. State and Regional Boards

The State Water Resources Control Board (State Board or SWRCB) and the California Regional Water Quality Control Boards (Regional Boards or RWQCBs) are established by the Porter-Cologne Water Quality Control Act, Division 7 (commencing with Section 13000) of the California Water Code. The State and Regional Boards are the state agencies with primary responsibility for water quality control in California. The Act provides a statewide program for water quality control administered regionally within a framework of statewide coordination and policy. The Act contains a complete regulatory framework for the regulation of waste discharges to both surface and ground waters. It also provides for the adoption of water quality control plans and implementation of these plans by adoption of water discharge requirements for the discharges of waste that could impact State waters. Extensive enforcement mechanisms are available to ensure that requirements are met.

The Water Code also provides the necessary authority for the State to operate the National Pollutant Discharge Elimination System (NPDES) permit program in California in lieu of U.S. EPA. The law is codified in Chapter 5.5, Division 7 of the Water Code. As a result, the issuance of a California NPDES permit under State law satisfies the requirements of the Federal Water Pollution Control Act.

The State Board's jurisdiction and responsibilities include but are not limited to: (a) overseeing Regional Board regulation of discharges into State waters under the California Porter-Cologne Water Quality Control Act; (b) developing water quality standards; (c) adopting and approving water quality control plans; (d) overseeing Regional Boards' issuance, compliance monitoring, and enforcement of all NPDES permits in California including NPDES general permits and permits for Federal facilities; (e) overseeing Regional Boards' implementation and enforcement of National Pretreatment Program requirements except for NPDES permits incorporating variances granted under Federal Water Pollution Control Act Sections 301(h) and 301(m) and permits to dischargers for which EPA has assumed direct responsibility; (f) designating "Areas of Special Biological Significance (ASBS):", under State Board Resolution No. 74-28, for the purposes of protecting areas of high biological productivity and ecological sensitivity; (g) adopting standards and regulations for waste disposal sites; (h) implementing Toxic Substances Monitoring (TSM) and State Mussel Watch Programs; (i) administering the State's Water Quality Planning Program pursuant to CWA Section 205(j); (j) issuing or denying Water Quality Certification for any Federally licensed or permitted project which may result in discharges to navigable State waters pursuant to CWA Section 401; (k) developing and implementing the State Nonpoint Source Management Program pursuant to CWA Section 319; and (l) working with the California Coastal Commission (CCC) and the San Francisco Bay Conservation and Development Commission (BCDC) in developing and implementing a Coastal Nonpoint Pollution Control Program pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, Section 6217.

The jurisdictional boundaries of the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board 2), are described in Water Code Section 13200(b). The jurisdictional boundaries of the California Regional Water Quality Control Board, Central Coast Region (Regional Board 3), are described in Water Code section 13200(c).

The Regional Boards have jurisdiction and are responsible for: (a) regulation of waste discharges into State waters; (b) adoption of water quality control plans for the watershed basins within each region; (c) issuance, monitoring, and enforcement of NPDES individual and general permits and other waste discharge requirement orders within each region;

(d) adoption and enforcement of pretreatment standards; (e) issuance, monitoring, and enforcement of requirements for waste disposals to land; and (f) taking all other planning and regulatory action necessary to assure protection of water quality within the regions.

#### D. California Coastal Commission

Pursuant to the California Coastal Act of 1976 and the Federal Coastal Zone Management Act (CZMA) of 1972, as amended, the California Coastal Commission (CCC) has jurisdiction and is responsible for: (a) administering the California Coastal Management Program (CCMP); (b) receiving grants from the Federal Government in support of the coastal management program; (c) implementing, through the CCMP's broad planning and regulatory framework, a comprehensive set of specific policies for the protection of coastal resources and the management of orderly development throughout the State's coastal zone; and (d) reviewing, for consistency with the CCMP, all activities within or outside of the coastal zone that affect land or water uses or natural resources of the coastal zone and that are conducted, permitted, or funded by the Federal government. In addition, pursuant to Section 6217 of the Coastal Zone Management Act Reauthorization Amendments of 1990, the CCC is responsible for developing, in conjunction with the SWRCB, a coastal Nonpoint Pollution Control Program for submission to the Administrator of U.S. EPA and the Secretary of Commerce for approval.

The Coastal Act grants the CCC authority to issue Coastal Development Permits (CDPs) for any development in the coastal zone until local governments adopt CCC-approved Local Coastal Programs (LCPs). The Commission works with local governments to design LCPs that reflect local coastal issues while meeting the statewide goals and policies of the Coastal Act. Upon certifying a LCP's compliance with Coastal Act requirements, the CCC delegates most permitting and related monitoring and enforcement responsibilities to the local jurisdiction. Several well-defined regulatory responsibilities delineated by the Coastal Act and the CZMA, however, permanently reside with the CCC. Included among these is the aforementioned "Federal consistency" review authority. Distinct sets of State and Federal standards and procedures for determining consistency with the CCMP apply to Federal agency activities, Federally funded activities, and non-Federal activities that require Federal licenses or permits, including oil and gas exploration, development, and production on the Outer Continental Shelf.

#### E. Association of Monterey Bay Area Governments

The Association of Monterey Bay Area Governments (AMBAG) is a Council of Governments, created as a voluntary agency established by agreement among its members pursuant to a joint

powers agreement, and established among its members as an area-wide planning and water quality management organization and is responsible for: (a) serving as the Metropolitan Regional Clearing House to review and comment on Federal grant applications and proposed Federal projects and other environmental documents and plans prepared pursuant to CEQA and NEPA, (b) creating a Non-Point Source Water Quality Management Plan pursuant to its designation by the State in 1975 under Section 208 of the Federal Water Pollution Control Act, (c) managing Federal transportation funds, general transportation, reviewing transportation projects or capital improvements in major urban areas and annually endorsing a Transportation Improvement Program and Regional Transportation Plan pursuant to its designation as a Metropolitan Planning Organization (MPO) by the State of California, (d) preparing an air quality plan to ensure consistency with Federal Clean Air Act, National Air Quality Standards, (e) preparing a regional hazardous waste management plan in accordance with Tanner Legislation (AB 2948, 1986), and (f) preparing a 5-year plan of housing needs for each city and county within its jurisdiction.

### III. SCOPE

This agreement shall apply to the following permits, plans, research, and monitoring efforts within all California waters to achieve the purpose of this MOA:

- A. National Pollutant Discharge Elimination System (NPDES) permits (which include stormwater associated with industrial activity and stormwater from urban areas) issued under Section 13377 of the California Water Code (Hereafter "NPDES permit"),
- B. Waste Discharge Requirements (WDR) issued under Section 13263 of the California Water Code,
- C. California Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan, relevant Basin Plans, and CWA 208 Plans,
- D. Non-Point Source (Hereafter "NPS", when abbreviated) Pollution Planning and Control Measures including Management Plans prepared under Sections 319 and 208 of the CWA and under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990, and
- E. Research and monitoring toward the development of a Sanctuary Water Quality Protection Program, as outlined in Section VII of this MOA.

#### IV. POLICY FOR INTERAGENCY COORDINATION

##### A. NOAA Role:

- Provide its Sanctuary data and reports to the signatory agencies semiannually.
- Ensure holistic, uniform protection is provided to all Sanctuary resources and qualities.
- Provide comprehensive ecosystem perspective.
- Consider cumulative impacts from multitude of projects.
- Consider multiple use and conflict resolution between potentially competing user groups and other Sanctuary activities, e.g., research and education projects and other permitted activities.
- Provide experience and perspective from National System of sanctuaries, e.g., examples and models of approaches and methods to address similar issues from other sites.
- Build up data-base on what is going on in Sanctuary area via tracking and filing of existing permits to see if problems exist. Begin to address potential or perceived problems early on and then work cooperatively to address issues.
- Provide recommendations on conditions or objections to discharge permits based upon potential injury to Sanctuary resources and qualities and compliance with applicable criteria.
- Work with all signatory agencies of this MOA to integrate NOAA criteria, goals, and objectives into water quality plans, i.e., Basin Plans, California Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan, CWA 208 and 319 Plans, and CZMA NPS management measures.
- Provide comments on impacts on Sanctuary resources and qualities, impacts on compatible uses of the Sanctuary, and impacts on NOAA's management of the Sanctuary.
- Identify, in consultation with U.S. EPA, a specific threat of significant injury or significant injury to the Sanctuary resources or qualities. NOAA provides evidence and informs U.S. EPA, the RWQCB, the discharger (for existing permits), or the permit applicant.
- Work with U.S. EPA, the discharger or applicant, and RWQCB to address the threat of significant injury or significant injury to the Sanctuary.

- Utilize the "Process for Elevation" (see Section VIII of this MOA) when it deems appropriate.
- Provide certifications in accordance with this MOA.

B. U.S. EPA Role:

- Work with the State Board and the Regional Boards to assure that all Section 402 NPDES permits are issued in a timely manner, protective of water quality, and that full compliance is achieved with all the terms contained therein.

C. State Board Role:

- Provide expertise on water quality issues.
- Work with NOAA and Regional Boards to determine if it is necessary to develop criteria in addition to that already promulgated by the State and Regional Boards or to take other specific actions in order to protect Sanctuary resources and qualities.
- Work with NOAA and Regional Boards in developing criteria that are scientifically sound to ensure proposed criteria are acceptable for adoption by the State Board as water quality objectives or standards in the respective water quality control plans.
- Oversee all Regional Boards' NPDES permits and other waste discharge requirements.
- Review and provide responses to all petitions filed by NOAA and recommendations made by the Joint Review Board during the "Referral Process" (See Section VIII.B. of this MOA).
- Work with the California Coastal Commission (CCC) and the San Francisco Bay Conservation and Development Commission (BCDC) in developing and implementing a Coastal Non-Point Pollution Control Program pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, Section 6217.

D. Regional Boards' Roles:

- Issue NPDES and Waste Discharge Requirements permits in accordance with applicable State and Federal laws.
- Coordinate procedure to comment on permits as outlined in Section V of this MOA and fulfill Regional board duties described in Sections V and VIII of this MOA.
- Work with NOAA and State Board to determine if it is necessary to develop criteria in addition to that already

promulgated by the State and Regional Boards in order to protect Sanctuary resources and qualities.

- Work with NOAA and State Board in developing criteria that are scientifically sound and to ensure proposed criteria are acceptable for adoption by the State Board as water quality objectives or standards in the respective water quality control plans.
- Provide expertise on water quality issues.
- Coordinate with NOAA and all other appropriate agencies on development and implementation of nonpoint source control activities.
- Provide NOAA with data and reports from Regional Board contracts or activities within the Sanctuary.
- Regional Board 3 work with CCC to provide to NOAA the final report on the Coastal Zone Management Act Morro Bay Nonpoint Source pilot program (including status, accomplishments, and potential applicability to the Sanctuary).

E. California Coastal Commission Role:

- Evaluate effects of proposed activities (including discharges) on coastal land and water uses and natural resources in the coastal zone to determine if the proposed activities are consistent with the CCMP. Such evaluations particularly will be guided by the policies set forth in the Coastal Act, an integral component of the CCMP. These policies include, but are not limited to, the following:

Public Resources Code Section 30230 which provides that "[m]arine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance..." and that "[u]ses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes...;"

Public Resources Code Section 30231 which directs that biological productivity and water quality shall be "maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment controlling runoff, preventing depletion of ground water supplies, and substantial interference with surface water flow,

encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams...;"

Public Resources Code Section 30233(a) which limits dredging and filling in coastal waters to situations where "there is no feasible less environmentally damaging alternative," and where feasible mitigation measures have been provided to minimize adverse environmental effects, and where it is related to specific listed purposes;

Public Resources Code Section 30233(b), which states that "Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems."

Public Resources Code Section 30240 which mandates the protection of environmentally sensitive habitat areas "against any significant disruption of habitat values" and against impacts from adjacent development which would "significantly degrade" the area; and,

Public Resources Code Section 30262 which sets forth specific policies applicable to the Commission's regulation of oil and gas development.

- Cooperate with NOAA, EPA, SWRCB, RWQCBs and other Federal, state, and local agencies to promote timely issuance of permits and plans relevant to the MBNMS.
- Provide coastal zone management experience from a statewide perspective on the development of regulatory, planning, educational, and other programs which will be included in the overall management of the MBNMS.
- Ensure that the goals and objectives for protection of the MBNMS's resources are appropriately incorporated in the Monterey Bay segment of the California Coastal Nonpoint Pollution Control Program to be submitted to NOAA and U.S. EPA for approval.

F. Association of Monterey Bay Area Governments Role:

- Consider publication of a Monterey Bay Sanctuary Newsletter that circulates summaries of, and provides review comments on, proposed activities and developments within the Regional Metropolitan Clearinghouse area of projects, studies, plans,

and permits which could impact directly or indirectly the Sanctuary.

- Ensure that the interests of local cities and counties are represented during the discharge permitting and planning review process.
- Ensure that any proposed projects or developments are reviewed, when applicable, for consistency with the 208 nonpoint source water quality management plan.
- Provide all parties to the MOA an opportunity to update the area's 208 plan (now 14 years old) in order to document what has been implemented since the late 1970's, and what nonpoint source water quality problems remain to be resolved particularly as they affect the Sanctuary.
- Participate with other agencies in nonpoint source water quality planning issues pertinent to the Sanctuary, including but not limited to 205(j) planning projects, such as the Elkhorn Slough Uplands Water Quality Management Plan, the Urban Runoff Water Quality Management Plan for the Monterey Bay Region, the Coastal Aquatic and Marine Projects Information Transfer System (CAMPTIS), and other non-point source planning efforts such as the Coastal Nonpoint Pollution Control Program under Section 6217 of the Federal Coastal Zone Act Reauthorization Amendments of 1990.

#### V. PROCEDURES AT THE INITIAL DECISION-MAKING LEVELS

##### A. General:

1. Parties agree to work together and review proposed permits and plans in parallel to avoid delays in issuance of the permit or plan.
2. NOAA agrees to provide a reasonable basis for objections or recommended terms and conditions based on evidence of a significant threat of injury to Sanctuary resources, qualities, compliance with applicable criteria, and effects on other compatible uses of the Sanctuary.
3. The Regional Board staff will make every effort to resolve conflicts between NOAA and the Regional Board during the scheduled comment period.
4. If conflicts are not resolved during the comment period, the Regional Board may take action on the permit or plan. The effective date of any new

permit that is not consistent with all of NOAA's comments will be no earlier than 45 days from the date the Regional Board adopts the permit. If NOAA has objections after Regional Board adoption of the permit or plan, NOAA may appeal the decision in accordance with the process for elevation outlined in Section VIII of this MOA.

B. Existing Permits (NPDES/WDR):

Copies of all current permits for discharges originating in:

- \* all of the counties of Monterey, Santa Cruz and San Benito,

- \* those portions of San Luis Obispo County which fall within the Salinas River drainage or which drain into the Pacific Ocean northerly of the southern boundary of the Sanctuary,

- \* those portions of San Mateo County which drain directly into the Pacific Ocean,

- \* those portions of the City and County of San Francisco which drain directly into the Pacific Ocean, and

- \* those portions of Marin County southerly of the northern boundary of the Sanctuary which drain into the Pacific Ocean

will be sent within 90 days of the effective date of Sanctuary designation, by the Regional Boards to NOAA with a listing of expiration/review dates, as well as the Regional Boards' schedule for mailing of draft permits for existing dischargers. NOAA will use information obtained pursuant to this paragraph in its efforts to implement a Sanctuary monitoring plan. Regional Boards will also provide copies or summaries of existing monitoring data for the last three years for each discharger.

Discharges outside the Sanctuary shall not be prohibited for failure to notify NOAA within 90 days of sanctuary designation.

NOAA will review existing permits and NOAA will report to the Regional Boards on any conflicts between Sanctuary protection and the quality of discharges as soon as a conflict is documented by NOAA.

NOAA may request a Regional Board review and commensurate hearing to consider permit revision or enforcement action by the Regional Board at any time data warrant such action. The Regional Boards will determine whether data warrant the reopening of a permit subsequent to a hearing. NOAA bears the burden of demonstrating threat of injury which would justify revision of permits by the Regional Boards before a regular five-year review. Such demonstration will be based on State or Federal laws, regulations, and standards. NOAA will make every attempt to minimize requests for "mid-permit life" revisions by evaluating all available data during the regularly scheduled five-year review intervals. Any revisions must be consistent with EPA regulations on reopening permits.

Provided the provisions of this Section V.B are adhered to by the Regional Boards, NOAA will certify within six months of receipt the existing valid permits it receives copies of.

C. Existing Plans

NOAA will review and provide comment on the California Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan and Regional Board Basin Plans during the regularly scheduled review period.

All parties agree to make every effort to build upon existing regional, local, and State water quality control plans.

D. Non-Point Source Pollution

All parties recognize the significance of nonpoint source (NPS) pollution to the health of the Monterey Bay ecosystem, and whereas there is currently a lack of data and information to adequately control NPS pollution all parties agree to:

Focus pertinent ongoing NPS pollution efforts such as CWA 205(j) studies, municipal and industrial stormwater permitting (Section 402, CWA), 208 plans, 319 programs, and NOAA water quality research efforts to develop adequate prevention and management measures for protection of the Sanctuary. Management of significant contributions to nonpoint source pollution to Monterey Bay shall be addressed through the ongoing development of the State's Coastal Non-Point Source Pollution Control Program under Section 6217, and the Bay Protection and Toxic Cleanup Program.

Work together to incorporate those controls and measures determined necessary to protect the Sanctuary into the California Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan and appropriate Basin Plans once adequate prevention controls and management measures have been determined.

E. New and Revised Permits

Regional Boards will require applicants for new and revised permits ("revised permits" include renewals) for discharges originating in the geographic areas described in Section V.B of this MOA to submit applications simultaneously to NOAA as well as the Regional Board. Further, if NOAA provides reasonable evidence of a significant threat of injury to Sanctuary resources or qualities from a proposed or on-going discharge originating outside those geographic areas but originating anywhere in San Luis Obispo County, the relevant Regional Board will require the applicant for that new or revised permit to submit an application to NOAA as well. Regional Boards will make every effort to ensure that applicants for revised permits submit applications at least six months before expiration of current permits.

No additional applications will be required by NOAA, however NOAA may seek, through the Board, additional information from the applicants in accordance with State law. Regional Boards will draft permits according to the schedule submitted to NOAA, incorporating all criteria which the Regional Board determines to be applicable (e.g., State Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan, Basin Plans, Federal regulations) as agreed upon in the 1989 National Pollutant Discharge Elimination System (NPDES) MOA between the U.S. EPA and the SWRCB. Regional Boards will mail draft permits to NOAA and all other concerned agencies for comment 90 days before scheduled adoption of the draft permit by the Regional Board. No permit may be renewed or otherwise issued allowing the discharge of primary-treated sewage within the Sanctuary. However, as the City of Watsonville is in the process of obtaining a CWA 301(h) waiver renewal as the Sanctuary designation is being finalized, the City of Watsonville may be allowed a one time renewal with a timeline for compliance with secondary standards requirements. This one time renewal allows the City of Watsonville until November 1, 1998 to achieve secondary treatment. The signatories of this MOA will cooperate with and where possible assist the City of Watsonville to achieve secondary treatment of sewage.

NOAA will review and comment on any draft new or revised permits and EIRs/EISs during the publicly noticed comment period. NOAA will review draft permits, monitoring summaries, and any other applicable data, and provide comments to the Regional Board no later than 30 days prior to the scheduled date of Regional Board adoption of the permit. Agendas are sent to Regional Board members two weeks before the meeting (one week for Regional Board 2). All comments should be based upon State or Federal laws, regulations, and standards which will be specified in the comments.

The Regional Board shall consider and address all comments and shall modify the proposed permit to incorporate those comments with which the Regional Board agrees and shall prepare a written response to each NOAA comment that is not accommodated. If the Regional Board adopts a revised permit which is not consistent with all of NOAA's comments, the permit will be effective upon expiration of the current permit. If the Regional Board adopts a new permit which is not consistent with all of NOAA's comments, the effective date of the permit will be no earlier than 45 days from the date the Regional Board adopts the permit. However, the permit could be affirmed, amended or overturned in accordance with Section VIII, the Procedures for Referral.

Valid permits that are consistent with all of NOAA's comments will be deemed by NOAA, through notification to the permittee, to have met paragraph (a) of 15 C.F.R. § 944.11. Valid revised permits that are not consistent with all of NOAA's comments will be deemed by NOAA to have met such paragraph (a) on an interim basis as of their effective date and will be deemed by NOAA to have met such paragraph (a) on a final basis upon NOAA notification to the permittee that Sections V.E and VIII of this MOA have been complied with. Valid new permits that are not consistent with all of NOAA's comments will be deemed by NOAA to have met such paragraph (a) upon NOAA notification to the permittee that Sections V.E and VIII of this MOA have been complied with. Such notification shall be sent by NOAA within 10 working days following NOAA receipt of written notice of the action by the RWQCB or SWRCB, as appropriate. If NOAA fails to act within this time period, the subject permit shall be deemed to have met such paragraph (a).

No permit may be issued allowing the disposal of dredge material within the Sanctuary other than at sites

designated as of the effective date of Sanctuary designation.

With regard to the combined sewer overflow component of the City and County of San Francisco's sewage treatment program, as approved by the San Francisco RWQCB and U.S. EPA: a buffer zone has been created encompassing the anticipated discharge plume in order to protect Sanctuary resources and qualities from the discharge. The parties to this MOA agree that the MPRSA and its implementing regulations do not apply to the buffer zone. The buffer zone extends from Point San Pedro (37° 35' 39.9577'' N latitude, 122° 31' 11.0433'' W longitude); to 37° 36' 59.4490'' N latitude, 122° 36' 56.2934'' W longitude; to 37° 46' 01.2422'' N latitude, 122° 38' 56.4737'' W longitude; to Point Bonita (37° 49' 05.9481'' N latitude, 122° 31' 42.3981'' W longitude). The shoreward boundary of the buffer zone extends from Point San Pedro north along the coast following the mean high tide line to Point Lobos and thence in a straight line to Point Bonita.

F. Consistency Review Procedures

California Coastal Commission shall conduct its consistency review in accordance with the NOAA-approved CCMP.

VI. INTEGRATION AND COORDINATION OF RESEARCH AND MONITORING EFFORTS

- All parties to this MOA agree that a higher degree of resource protection may be necessary for the Sanctuary.
- All parties to this MOA agree to conduct, coordinate, and integrate any joint research, monitoring, and permit review oversight. The results of these efforts will be used to develop a more specific water quality management plan and to provide a higher degree of resource protection for the Sanctuary.

VII. SANCTUARY WATER QUALITY PROTECTION PROGRAM AND DEVELOPMENT OF SANCTUARY CRITERIA

A. Sanctuary Criteria

- Criteria are proposed values which are intended to provide a nonregulatory, scientific evaluation of the ecological effects of pollutants. EPA has published numerical criteria for priority pollutants under CWA Section 304(a). The Section 304(a) criteria or other proposed values become water quality objectives after adoption by the State Board

pursuant to the provisions of the California Porter-Cologne Water Quality Control Act. These objectives, once they are combined with beneficial uses and approved by EPA, become water quality standards pursuant to the CWA.

- NOAA shall consult with the State Board and the Regional Boards to determine if it is necessary to develop criteria in addition to those already promulgated by the

State Board and Regional Boards in order to protect Sanctuary resources and qualities and compatible uses.

- Any necessary specific criteria will be developed for the Sanctuary to implement the purposes of Title III of the MPRSA. These criteria will be developed in a Water Quality Protection Program process (see below under Part B of this Section).

B. Water Quality Protection Program

- All signatory agencies agree to work together to develop a comprehensive water quality protection program for the Sanctuary.

- The purposes of such water quality program shall be to--

(A) recommend priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the Sanctuary, including restoration and maintenance of the resources, qualities and compatible uses of the Sanctuary; and

(B) assign responsibilities for the implementation of the program among the Governor, the Secretary of Commerce, and the Administrator of U.S. EPA or designees in accordance with applicable Federal and State laws.

The program shall under applicable Federal and State laws provide for measures to achieve the purposes described above including--

(A) adoption or revision, under applicable Federal and State laws, by the State and the Administrator of applicable water quality standards for the Sanctuary, based on water quality criteria which may utilize biological monitoring or assessment methods, to assure protection and restoration of the resources and qualities of the Sanctuary;

(B) adoption under applicable Federal and State laws of enforceable pollution control measures (including water quality-based effluent limitations and best management practices) and methods to eliminate or reduce pollution from point and nonpoint sources;

(C) establishment of a comprehensive water quality monitoring program to (i) determine the sources of pollution causing or contributing to existing or anticipated pollution problems in the Sanctuary, (ii) evaluate the effectiveness of efforts to reduce or eliminate those sources of pollution, and (iii) evaluate progress toward achieving and maintaining water quality standards and toward protecting and restoring any degraded areas and living marine resources of the Sanctuary;

(D) provision of adequate opportunity for public participation in all aspects of developing and implementing the program;

(E) identification of funding for implementation of the program, including appropriate Federal and State cost sharing arrangements; and

(F) provision to ensure compliance with the program consistent with applicable Federal and State laws.

- In the development and implementation of the program appropriate State and local government officials shall be consulted either directly or via AMBAG.

#### VIII. PROCEDURES FOR REFERRAL

##### A. General:

1. In the vast majority of cases, the concerns of the different parties to this MOA will be addressed at the Initial Decision-making levels.
2. If concerns have not been resolved at the Initial Decision-making levels, the dispute could be referred to higher level officials within each agency for resolution.
3. If resolution is not reached at Initial Decision-making levels, the following process is available to NOAA.

##### B. Process for elevation:

1. If the RWQCB permit does not, in the opinion of NOAA, adequately act to relieve the threat of significant injury or significant injury to the Sanctuary, i.e., the threat of significant injury or significant injury is still occurring and there is not underway a NOAA-approved (in consultation with U.S. EPA) action plan to adequately reduce or eliminate the threat of significant injury or significant injury to the Sanctuary, NOAA may file an appeal with the SWRCB within 30 days of the RWQCB action (ref: Section 13320

of the California Water Code). The SWRCB shall act to confirm, amend or overturn the decision of the RWQCB within 45 days of the appeal being filed by NOAA.

2. If, after the SWRCB acts to confirm, amend or overturn the decision of the RWQCB, in the opinion of NOAA, the SWRCB has not adequately acted, i.e, the threat of significant injury or significant injury to the Sanctuary is still occurring and there is not underway a NOAA-approved (in consultation with U.S. EPA) action plan to adequately reduce or eliminate the threat of significant injury or significant injury to the Sanctuary, NOAA may file an appeal with the MBNMS Joint Review Board (JRB) within 30 days of the SWRCB's action. The JRB shall consist of the Administrator of NOAA (or designee) and the Secretary of California EPA (or designee).
3. After considering information received from NOAA, the SWRCB, the RWQCB, other public agencies and the public, the JRB shall recommend to the SWRCB the confirmation, amendment, or overturning of the decision of the SWRCB. The JRB shall make such recommendation within 30 days of receipt of the appeal to it.
4. The SWRCB shall act to confirm, amend or overturn its decision within 60 days of receipt of the JRB's recommendation.

#### **IX. RIGHTS OF APPEAL OR PETITION UNDER FEDERAL OR CALIFORNIA STATUTE OR REGULATION**

This MOA is not intended to limit any rights of appeal or petition of any signatory to this MOA existing under Federal or California statute or regulation.

#### **X. MODIFICATION PROVISIONS**

This MOA shall become effective upon signature by all parties hereto.

Any amendment to this MOA shall only be in writing and shall become effective only upon the signature of all signatory agencies. Any amendment to this MOA shall be published in the Federal Register.

An individual signatory agency may withdraw from this MOA only if the Procedures for Referral in Section VIII have been exhausted on at least one occasion and the resolution of the subject dispute is not acceptable to the withdrawing party. Upon notice that a party is considering withdrawing, NOAA shall publish a notice in the Federal Register stating the reasons for

ultimately decides to withdraw, it shall give the other parties at least 90 days notice of intent to withdraw, and NOAA shall publish a notice in the Federal Register announcing the withdrawal.

This MOA shall become invalid only if NOAA or the SWRCB withdraws in accordance with the above procedures.

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Gertrude M. Cox, Director  
Office of Ocean and Coastal Resource Management  
National Oceanic and Atmospheric Administration

---

Harry Seraydarian, Director  
Office of Water, Region IX  
U.S. Environmental Protection Agency

---

James Strock, Secretary  
California Environmental Protection Agency

---

Walt Pettit, Executive Director  
State Water Resources Control Board

---

Steven Ritchie, Executive Officer  
San Francisco Regional Water Quality Control Board

---

William Leonard, Executive Officer  
Central Coast Regional Water Quality Control Board

---

Peter Douglas, Executive Director  
California Coastal Commission

---

Nicolas Papadakis, Executive Director  
Association of Monterey Bay Area Governments

OF AGREEMENT  
 BETWEEN  
 THE  
 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
 THE  
 U.S. ENVIRONMENTAL PROTECTION AGENCY,  
 THE  
 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
 THE  
 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD,  
 THE  
 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
 CENTRAL COAST REGION,  
 THE  
 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
 SAN FRANCISCO BAY REGION,  
 THE  
 CALIFORNIA COASTAL COMMISSION,  
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I. PURPOSE OF MOA

The purpose of this Memorandum of Agreement (MOA) is to provide an ecosystem based water quality management process that integrates the mandates and expertise of existing coastal and ocean resource managers and protects the nationally significant resources, qualities and compatible uses of the Monterey Bay National Marine Sanctuary (Sanctuary or MBNMS).

II. AUTHORITY

A. NOAA

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, (MPRSA), 16 U.S.C. §§ 1431 et seq., National Program Regulations at 15 CFR Part 922 and the

Monterey Bay National Marine Sanctuary regulations at 15 CFR Part 944 as administered by the National Oceanic and Atmospheric Administration (NOAA).

#### B. U. S. EPA

The Federal Water Pollution Control Act, as amended, (Federal Water Pollution Control Act or Clean Water Act (CWA)), 33 U.S.C. §§ 1251 et seq., gives the U.S. Environmental Protection Agency (U.S. EPA) authority to regulate both point and non-point (e.g., stormwater) sources of pollution. In addition, title I of the MPRSA (33 U.S.C. §§ 1401 et seq.) section 102 gives U.S. EPA authority to permit non-dredged material for the purpose of dumping into marine waters.

#### C. State and Regional Boards

The State Water Resources Control Board (State Board or SWRCB) and the California Regional Water Quality Control Boards (Regional Boards or RWQCBs) are established by the Porter-Cologne Water Quality Control Act, Division 7 (commencing with Section 13000) of the California Water Code. The State and Regional Boards are the state agencies with primary responsibility for water quality control in California. The Act provides a statewide program for water quality control administered regionally within a framework of statewide coordination and policy. The Act contains a complete regulatory framework for the regulation of waste discharges to both surface and ground waters. It also provides for the adoption of water quality control plans and implementation of these plans by adoption of water discharge requirements for the discharges of waste that could impact State waters. Extensive enforcement mechanisms are available to ensure that requirements are met.

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The Water Code also provides the necessary authority for the State to operate the National Pollutant Discharge Elimination System (NPDES) permit program in California in lieu of U.S. EPA. The law is codified in Chapter 5.5, Division 7 of the Water Code. As a result, the issuance of a California NPDES permit under State law satisfies the requirements of the Federal Water Pollution Control Act.

The State Board's jurisdiction and responsibilities include but are not limited to: (a) overseeing Regional Board regulation of discharges into State waters under the California Porter-Cologne Water Quality Control Act; (b) developing water quality standards; (c) adopting and approving water quality control plans; (d) overseeing Regional Boards' issuance, compliance monitoring, and enforcement of all NPDES permits in California including NPDES general permits and permits for Federal facilities; (e) overseeing Regional Boards' implementation and enforcement of National Pretreatment Program requirements except for NPDES permits incorporating variances granted under Federal Water Pollution Control Act Sections 301(h) and 301(m) and permits to dischargers for which EPA has assumed direct responsibility; (f) designating "Areas of Special Biological Significance (ASBS);", under State Board Resolution No. 74-28, for the purposes of protecting areas of high biological productivity and ecological sensitivity; (g) adopting standards and regulations for waste disposal sites; (h) implementing Toxic Substances Monitoring (TSM) and State Mussel Watch Programs; (i) administering the State's Water Quality Planning Program pursuant to CWA Section 205(j); (j) issuing or denying water Quality Certification for any Federally licensed or permitted project which may result in discharges to navigable State waters pursuant to CWA Section 401; (k) developing and implementing the State Nonpoint Source Management Program pursuant to CWA Section 319; and (l) working with the California Coastal Commission (CCC) and the San Francisco Bay Conservation and Development Commission (BCDC) in developing and implementing a Coastal Nonpoint Pollution Control Program pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, Section 6217.

The jurisdictional boundaries of the California Regional Water Quality Control Board, San Francisco Bay Region (Regional

Board 2), are described in Water Code Section 13200(b). The jurisdictional boundaries of the California Regional Water Quality Control Board, Central Coast Region (Regional Board 3), are described in Water Code section 13200(c).

The Regional Boards have jurisdiction and are responsible for: (a) regulation of waste discharges into State waters; (b) adoption of water quality control plans for the watershed basins within each region; (c) issuance, monitoring, and enforcement of NPDES individual and general permits and other waste discharge requirement orders within each region; (d) adoption and enforcement of pretreatment standards; (e) issuance, monitoring, and enforcement of requirements for waste disposals to land; and (f) taking all other planning and regulatory action necessary to assure protection of water quality within the regions.

D. California Coastal Commission

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Pursuant to the California Coastal Act of 1976 and the Federal Coastal Zone Management Act (CZMA) of 1972, as amended, the California Coastal Commission (CCC) has jurisdiction and is responsible for: (a) administering the California Coastal Management Program (COMP); (b) receiving grants from the Federal Government in support of the coastal management program; (c) implementing, through the CCMP's broad planning and regulatory framework, a comprehensive set of specific policies for the protection of coastal resources and the management of orderly development throughout the State's coastal zone; and (d) reviewing, for consistency with the COMP, all activities within or outside of the coastal zone that affect land or water uses or natural resources of the coastal zone and that are conducted, permitted, or funded by the Federal government. In addition, pursuant to Section 6217 of the Coastal Zone Management Act Reauthorization Amendments of 1990, the CCC is responsible for developing, in conjunction with the SWRCB, a coastal Nonpoint Pollution Control Program for submission to the Administrator of U.S. EPA and the Secretary of Commerce for approval.

The Coastal Act grants the CCC authority to issue Coastal Development Permits (CDPs) for any development in the coastal zone until local governments adopt CCC-approved Local Coastal Programs (LCPs). The Commission works with local governments to design LCPs that reflect local coastal issues while meeting the statewide goals and policies of the Coastal Act. Upon certifying a LCP's compliance with Coastal Act requirements, the CCC delegates most permitting and related monitoring and enforcement responsibilities to the local jurisdiction. Several well-defined regulatory responsibilities delineated by the Coastal Act and the CZMA, however, permanently reside with the CCC. Included among these is the aforementioned "Federal consistency" review authority. Distinct sets of State and Federal standards and procedures for determining consistency with the CCMP apply to Federal agency activities, Federally funded activities, and non-Federal activities that require Federal licenses or permits, including oil and gas exploration, development, and production on the outer Continental Shelf.

E. Association of Monterey Bay Area Governments

The Association of Monterey Bay Area Governments (AMBAG) is a Council of Governments, created as a voluntary agency established by agreement among its members pursuant to a joint

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powers agreement, and established among its members as an area-wide planning and water quality management organization and is responsible for: (a) serving as the Metropolitan Regional Clearing House to review and comment on Federal grant applications and proposed Federal projects and other environmental documents and plans prepared pursuant to CEQA and NEPA, (b) creating a Non-Point Source Water Quality Management Plan pursuant to its designation by the State in 1975 under Section 208 of the Federal Water Pollution Control Act,

(c) managing Federal transportation funds, general transportation, reviewing transportation projects or capital improvements in major urban areas and annually endorsing a Transportation Improvement Program and Regional Transportation Plan pursuant to its designation as a Metropolitan Planning organization (MPO) by the State of California, (d) preparing an air quality plan to ensure consistency with Federal Clean Air Act, National Air Quality Standards, (e) preparing a regional hazardous waste management plan in accordance with Tanner Legislation (AB 2948, 1986), and (f) preparing a 5-year plan of housing needs for each city and county within its jurisdiction.

### III. SCOPE

This agreement shall apply to the following permits, plans, research, and monitoring efforts within all California waters to achieve the purpose of this MOA:

A. National Pollutant Discharge Elimination System (NPDES) permits (which include stormwater associated with industrial activity and stormwater from urban areas) issued under Section 13377 of the California Water Code (Hereafter "NPDES permit"),

B. Waste Discharge Requirements (WDR) issued under Section 13263 of the California Water Code,

C. California Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan, relevant Basin Plans, and CWA 208 Plans,

D. Non-Point Source (Hereafter "NPS", when abbreviated) Pollution Planning and Control Measures including Management Plans prepared under Sections 319 and 208 of the CWA and under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990, and

E. Research and monitoring toward the development of a Sanctuary Water Quality Protection Program, as outlined in Section VII of this MOA.

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### IV. POLICY FOR INTERAGENCY COORDINATION

A. NOAA Role:

- Provide its Sanctuary data and reports to the signatory agencies semiannually.
- Ensure holistic, uniform protection is provided to all Sanctuary resources and qualities.
- Provide comprehensive ecosystem perspective.
- Consider cumulative impacts from multitude of projects.
- Consider multiple use and conflict resolution between potentially competing user groups and other Sanctuary activities, e.g., research and education projects and other permitted activities.
- Provide experience and perspective from National System of sanctuaries, e.g., examples and models of approaches and methods to address similar issues from other sites.
- Build up data-base on what is going on in Sanctuary area via tracking and filing of existing permits to see if problems exist. Begin to address potential or perceived problems early on and then work cooperatively to address issues.
- Provide recommendations on conditions or objections to discharge permits based upon potential injury to Sanctuary resources and qualities and compliance with applicable criteria.
- Work with all signatory agencies of this MOA to integrate NOAA criteria, goals, and objectives into water quality plans, i.e., Basin Plans, California Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan, CWA 208 and 319 Plans, and CZMA NPS management measures.
- Provide comments on impacts on Sanctuary resources and qualities, impacts on compatible uses of the Sanctuary, and impacts on NOAA's management of the Sanctuary.
- Identify, in consultation with U.S. EPA, a specific threat of significant injury or significant injury to the Sanctuary resources or qualities. NOAA provides evidence and informs U.S. EPA, the RWQCB, the discharger (for existing permits),

or the permit applicant.

- Work with U.S. EPA, the discharger or applicant, and RWQCB to address the threat of significant injury or significant injury to the Sanctuary.

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- Utilize the "Process for Elevation" (see Section VIII of this MOA) when it deems appropriate.

- Provide certifications in accordance with this MOA.

B. U.S. EPA Role:

- Work with the State Board and the Regional Boards to assure that all Section 402 NPDES permits are issued in a timely manner, protective of water quality, and that full compliance is achieved with all the terms contained therein.

C. State Board Role:

- Provide expertise on water quality issues.

- Work with NOAA and Regional Boards to determine if it is necessary to develop criteria in addition to that already promulgated by the State and Regional Boards or to take other specific actions in order to protect Sanctuary resources and qualities.

Work with NOAA and Regional Boards

that are scientifically sound to ensure that they are acceptable for adoption by the State Board as water quality objectives or standards in quality control plans.

Oversee all Regional Boards' NPDES discharge requirements.

in developing criteria to ensure proposed criteria

State Board as water

the respective water quality permits and other waste

- Review and provide responses to all petitions filed by NOAA and recommendations made by the Joint Review Board during the "Referral Process" (See Section VIII.B. of this MOA).

- Work with the California Coastal Commission (CCC) and the San Francisco Bay Conservation and Development Commission (BCDC) in developing and implementing a Coastal Non-Point Pollution Control Program pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, Section 6217.

D. Regional Boards' Roles:

- Issue NPDES and Waste Discharge Requirements permits in accordance with applicable State and Federal laws.

- Coordinate procedure to comment on permits as outlined in Section V of this MOA and fulfill Regional board duties described in Sections V and VIII of this MOA.

- Work with NOAA and State Board to determine if it is necessary to develop criteria in addition to that already

G-10 promulgated by the State and Regional Boards in order to protect Sanctuary resources and qualities.

- Work with NOAA and State Board in developing criteria that are scientifically sound and to ensure proposed criteria are acceptable for adoption by the State Board as water quality objectives or standards in the respective water quality control plans.

- Provide expertise on water quality issues.

- Coordinate with NOAA and all other appropriate agencies on development and implementation of nonpoint source control activities.

- Provide NOAA with data and reports from Regional Board contracts or activities within the Sanctuary.

- Regional Board 3 work with CCC to provide to NOAA the final report on the Coastal Zone Management Act Morro Bay Nonpoint Source pilot program (including status, accomplishments, and potential applicability to the Sanctuary).

E. California Coastal Commission Role:

- Evaluate effects of proposed activities (including discharges) on coastal land and water uses and natural

resources in the coastal zone to determine if the proposed activities are consistent with the CCMP. Such evaluations particularly will be guided by the policies set forth in the Coastal Act, an integral component of the CCMP. These policies include, but are not limited to, the following: Public Resources Code Section 30230 which provides that "[m]arine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance..." and that "[u]ses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes...;"

Public Resources Code Section 30231 which directs that biological productivity and water quality shall be "maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment controlling runoff, preventing depletion of ground water supplies, and substantial interference with surface water flow, G-11

encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams..."

Public Resources Code Section 30233(a) which limits dredging and filling in coastal waters to situations where "there is no feasible less environmentally damaging alternative," and where feasible mitigation measures have been provided to minimize adverse environmental effects, and where it is related to specific listed purposes;

Public Resources Code Section 30233(b), which states that "Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems."

Public Resources Code Section 30240 which mandates the protection of environmentally sensitive habitat areas "against any significant disruption of habitat values" and against impacts from adjacent development which would "significantly degrade" the area; and, Public Resources Code Section 30262 which sets forth specific policies applicable to the Commission's regulation of oil and gas development.

- Cooperate with NOAA, EPA, SWRCB, RWQCBs and other Federal, state, and local agencies to promote timely issuance of permits and plans relevant to the MBNMS.

- Provide coastal zone management experience from a statewide perspective on the development of regulatory, planning, educational, and other programs which will be included in the overall management of the MBNMS.

- Ensure that the goals and objectives for protection of the MBNMS's resources are appropriately incorporated in the Monterey Bay segment of the California Coastal Nonpoint Pollution Control Program to be submitted to NOAA and U.S. EPA for approval.

F. Association of Monterey Bay Area Governments Role:

- Consider publication of a Monterey Bay Sanctuary Newsletter that circulates summaries of, and provides review comments on, proposed activities and developments within the Regional Metropolitan Clearinghouse area of projects, studies, plans, G-12

and permits which could impact directly or indirectly the

Sanctuary.

- Ensure that the interests of local cities and counties are represented during the discharge permitting and planning review process.
- Ensure that any proposed projects or developments are reviewed, when applicable, for consistency with the 208 nonpoint source water quality management plan.
- Provide all parties to the MOA an opportunity to update the area's 208 plan (now 14 years old) in order to document what has been implemented since the late 1970's, and what nonpoint source water quality problems remain to be resolved particularly as they affect the Sanctuary.
- Participate with other agencies in nonpoint source water quality planning issues pertinent to the Sanctuary, including but not limited to 205(j) planning projects, such as the Elkhorn Slough Uplands Water Quality Management Plan, the Urban Runoff Water Quality Management Plan for the Monterey Bay Region, the Coastal Aquatic and Marine Projects Information Transfer System (CAMPTIS), and other non-point source planning efforts such as the Coastal Nonpoint Pollution Control Program under Section 6217 of the Federal Coastal Zone Act Reauthorization Amendments of 1990.

## V. PROCEDURES AT THE INITIAL DECISION-MAKING LEVELS

### A. General:

1. Parties agree to work together and review proposed permits and plans in parallel to avoid delays in issuance of the permit or plan.
2. NOAA agrees to provide a reasonable basis for objections or recommended terms and conditions based on evidence of a significant threat of injury to Sanctuary resources, qualities, compliance with applicable criteria, and effects on other compatible uses of the Sanctuary.
3. The Regional Board staff will make every effort to resolve conflicts between NOAA and the Regional Board during the scheduled comment period.
4. If conflicts are not resolved during the comment period, the Regional Board may take action on the permit or plan. The effective date of any new

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permit that is not consistent with all of NOAA's comments will be no earlier than 45 days from the date the Regional Board adopts the permit. If NOAA has objections after Regional Board adoption of the permit or plan, NOAA may appeal the decision in accordance with the process for elevation outlined in Section VIII of this MOA.

### B. Existing Permits (NPDES/WDR):

Copies of all current permits for discharges originating in:

- \* all of the counties of Monterey, Santa Cruz and San Benito,
- \* those portions of San Luis Obispo County which fall within the Salinas River drainage or which drain into the Pacific ocean northerly of the southern boundary of the Sanctuary,
- \* those portions of San Mateo County which drain directly into the Pacific Ocean,
- \* those portions of the City and County of San Francisco which drain directly into the Pacific Ocean, and
- \* those portions of Marin County southerly of the northern boundary of the Sanctuary which drain into the Pacific Ocean

will be sent within 90 days of the effective date of Sanctuary designation, by the Regional Boards to NOAA with a listing of expiration/review dates, as well as the Regional Boards' schedule for mailing of draft permits for existing dischargers. NOAA will use

information obtained pursuant to this paragraph in its efforts to implement a Sanctuary monitoring plan. Regional Boards will also provide copies or summaries of existing monitoring data for the last three years for each discharger.

Discharges outside the Sanctuary shall not be prohibited for failure to notify NOAA within 90 days of sanctuary designation.

NOAA will review existing permits and NOAA will report to the Regional Boards on any conflicts between Sanctuary protection and the quality of discharges as soon as a conflict is documented by NOAA.

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NOAA may request a Regional Board review and commensurate hearing to consider permit revision or enforcement action by the Regional Board at any time data warrant such action. The Regional Boards will determine whether data warrant the reopening of a permit subsequent to a hearing. NOAA bears the burden of demonstrating threat of injury which would justify revision of permits by the Regional Boards before a regular five-year review. Such demonstration will be based on State or Federal laws, regulations, and standards. NOAA will make every attempt to minimize requests for "mid-permit life" revisions by evaluating all available data during the regularly scheduled five-year review intervals. Any revisions must be consistent with EPA regulations on reopening permits.

C

D

Provided the provisions of this Section V.B are adhered to by the Regional Boards, NOAA will certify within six months of receipt the existing valid permits it receives copies of.

Existing Plans

NOAA will review and provide comment on the California Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan and Regional Board Basin Plans during the regularly scheduled review period.

All parties agree to make every effort to build upon existing regional, local, and State water quality control plans.

Non-Point Source Pollution

pollution all parties agree to:

All parties recognize the significance of nonpoint source (NPS) pollution to the health of the Monterey Bay ecosystem, and whereas there is currently a lack of data and information to adequately control NPS Focus pertinent ongoing NPS pollution efforts such as CWA 205(j) studies, municipal and industrial stormwater permitting (Section 402, CWA), 208 plans, 319 programs, and NOAA water quality research efforts to develop adequate prevention and management measures for protection of the Sanctuary. Management of significant contributions to nonpoint source pollution to Monterey Bay shall be addressed through the ongoing development of the State's Coastal Non-Point Source Pollution Control Program under Section 6217, and the Bay Protection and Toxic Cleanup Program.

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Work together to incorporate those controls and measures determined necessary to protect the Sanctuary into the California Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan and appropriate Basin Plans once adequate prevention controls and management measures have been determined.

E. New and Revised Permits

Regional Boards will require applicants for new and revised permits ("revised permits" include renewals)

for discharges originating in the geographic areas described in Section V.B of this MOA to submit applications simultaneously to NOAA as well as the Regional Board. Further, if NOAA provides reasonable evidence of a significant threat of injury to Sanctuary resources or qualities from a proposed or on-going discharge originating outside those geographic areas but originating anywhere in San Luis Obispo County, the relevant Regional Board will require the applicant for that new or revised permit to submit an application to NOAA as well. Regional Boards will make every effort to ensure that applicants for revised permits submit applications at least six months before expiration of current permits.

No additional applications will be required by NOAA, however NOAA may seek, through the Board, additional information from the applicants in accordance with State law. Regional Boards will draft permits according to the schedule submitted to NOAA, incorporating all criteria which the Regional Board determines to be applicable (e.g., State Ocean Plan, Enclosed Bays and Estuaries Plan, Inland Surface Water Plan, Basin Plans, Federal regulations) as agreed upon in the 1989 National Pollutant Discharge Elimination System (NPDES) MOA between the U.S. EPA and the SWRCB. Regional Boards will mail draft permits to NOAA and all other concerned agencies for comment 90 days before scheduled adoption of the draft permit by the Regional Board. No permit may be renewed or otherwise issued allowing the discharge of primary-treated sewage within the Sanctuary. However, as the City of Watsonville is in the process of obtaining a CWA 301(h) waiver renewal as the Sanctuary designation is being finalized, the City of Watsonville may be allowed a one time renewal with a timeline for compliance with secondary standards requirements. This one time renewal allows the City of Watsonville until November 1, 1998 to achieve secondary treatment. The signatories of this MOA will cooperate with and where possible assist the City of Watsonville to achieve secondary treatment of sewage.

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NOAA will review and comment on any draft new or revised permits and EIRs/EISs during the publicly noticed comment period. NOAA will review draft permits, monitoring summaries, and any other applicable data, and provide comments to the Regional Board no later than 30 days prior to the scheduled date of Regional Board adoption of the permit. Agendas are sent to Regional Board members two weeks before the meeting (one week for Regional Board 2). All comments should be based upon State or Federal laws, regulations, and standards which will be specified in the comments.

The Regional Board shall consider and address all comments and shall modify the proposed permit to incorporate those comments with which the Regional Board agrees and shall prepare a written response to each NOAA comment that is not accommodated. If the Regional Board adopts a revised permit which is not consistent with all of NOAA's comments, the permit will be effective upon expiration of the current permit. If the Regional Board adopts a new permit which is not consistent with all of NOAA's comments, the effective date of the permit will be no earlier than 45 days from the date the Regional Board adopts the permit. However, the permit could be affirmed, amended or overturned in accordance with Section VIII, the Procedures for Referral.

Valid permits that are consistent with all of NOAA's

comments will be deemed by NOAA, through notification to the permittee, to have met paragraph (a) of 15 C.F.R. § 944.11. Valid revised permits that are not consistent with all of NOAA's comments will be deemed by NOAA to have met such paragraph (a) on an interim basis as of their effective date and will be deemed by NOAA to have met such paragraph (a) on a final basis upon NOAA notification- to the permittee that Sections V.E and VIII of this MOA have been complied with. Valid new permits that are not consistent with all of NOAA'S comments will be deemed by NOAA to have met such paragraph (a) upon NOAA notification to the permittee that Sections V.E and VIII of this MOA have been complied with. Such notification shall be sent by NOAA within 10 working days following NOAA receipt of written notice of the action by the RWQCB or SWRCB, as appropriate. If NOAA fails to act within this time period, the subject permit shall be deemed to have met such paragraph (a).

No permit may be issued allowing the disposal of dredge material within the Sanctuary other than at sites G-17

designated as of the effective date of Sanctuary designation.

With regard to the combined sewer overflow component of the City and County of San Francisco's sewage treatment program, as approved by the San Francisco RWQCB and U.S. EPA: a buffer zone has been created encompassing the anticipated discharge plume in order to protect Sanctuary resources and qualities from the discharge.

The parties to this MOA agree that the MPRSA and its implementing regulations do not apply to the buffer zone. The buffer zone extends from Point San Pedro (37° 35' 39.957711 N latitude, 122° 31' 11.043311 W longitude); to 37° 36' 59.449011 N latitude, 122° 36' 56.293411 W longitude; to 37° 46' 01.242211 N latitude, 122° 38' 56.473711 W longitude; to Point Bonita (37° 49' 05.948111 N latitude, 122° 31' 42.3981" W longitude). The shoreward boundary of the buffer zone extends from Point San Pedro north along the coast following the mean high tide line to Point Lobos and thence in a straight line to Point Bonita.

#### F. Consistency Review Procedures

California Coastal Commission shall conduct its consistency review in accordance with the NOAA-approved CCMP.

### VI. INTEGRATION AND COORDINATION OF RESEARCH AND MONITORING EFFORTS

All parties to this MOA resource protection may

All parties to this MOA

integrate any joint res,

oversight. The results

develop a more specific

provide a higher degree

Sanctuary.

agree that a higher degree of

be necessary for the Sanctuary.

agree to conduct, coordinate, and

research, monitoring, and permit review

of these efforts will be used to

water quality management plan and to

of resource protection for the

### VII. SANCTUARY WATER QUALITY PROTECTION PROGRAM AND DEVELOPMENT OF SANCTUARY CRITERIA

#### A. Sanctuary Criteria

- Criteria are proposed values which are intended to provide a nonregulatory, scientific evaluation of the ecological effects of pollutants. EPA has published numerical criteria

for priority pollutants under CWA Section 304(a). The Section 304(a) criteria or other proposed values become water quality objectives after adoption by the State Board  
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pursuant to the provisions of the California Porter-Cologne Water Quality Control Act. These objectives, once they are combined with beneficial uses and approved by EPA, become water quality standards pursuant to the CWA.

- NOAA shall consult with the State Board and the Regional Boards to determine if it is necessary to develop criteria in addition to those already promulgated by the State Board and Regional Boards in order to protect Sanctuary resources and qualities and compatible uses.

- Any necessary specific criteria will be developed for the Sanctuary to implement the purposes of Title III of the MPRSA. These criteria will be developed in a Water Quality Protection Program process (see below under Part B of this section).

#### B. Water Quality Protection Program

- All signatory agencies agree to work together to develop a comprehensive water quality protection program for the Sanctuary.

- The purposes of such water quality program shall be to--

(A) recommend priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the Sanctuary, including restoration and maintenance of the resources, qualities and compatible uses of the Sanctuary; and

(B) assign responsibilities for the implementation of the program among the Governor, the Secretary of Commerce, and the Administrator of U.S. EPA or designees in accordance with applicable Federal and State laws.

The program shall under applicable Federal and State laws provide for measures to achieve the purposes described above including--

(A) adoption or revision, under applicable Federal and State laws, by the State and the Administrator of applicable water quality standards for the Sanctuary, based on water quality criteria which may utilize biological monitoring or assessment methods, to assure protection and restoration of the resources and qualities of the Sanctuary;

(B) adoption under applicable Federal and State laws of enforceable pollution control measures (including water quality-based effluent limitations and best management practices) and methods to eliminate or reduce pollution from point and nonpoint sources;

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(C) establishment of a comprehensive water quality monitoring program to (i) determine the sources of pollution causing or contributing to existing or anticipated pollution problems in the Sanctuary, (ii) evaluate the effectiveness of efforts to reduce or eliminate those sources of pollution, and (iii) evaluate progress toward achieving and maintaining water quality standards and toward protecting and restoring any degraded areas and living marine resources of the Sanctuary;

(D) provision of adequate opportunity for public participation in all aspects of developing and implementing the program;

(E) identification of funding for implementation of the program, including appropriate Federal and State cost sharing arrangements; and

(F) provision to ensure compliance with the program consistent with applicable Federal and State laws.

In the development and implementation of the program appropriate State and local government officials shall be consulted either directly or via AMBAG.

#### VIII. PROCEDURES FOR REFERRAL

A. General:

In the vast majority of cases, the concerns of the different parties to this MOA will be addressed at the Initial Decision-making levels.

2. If concerns have not been resolved at the Initial Decision-making levels, the dispute could be referred to higher level officials within each agency for resolution.

3. If resolution is not reached at Initial Decision-making levels, the following process is available to NOAA. .

B. Process for elevation:

1. If the RWQCB permit does not, in the opinion of NOAA, adequately act to relieve the threat of significant injury or significant injury to the Sanctuary, i.e., the threat of significant injury or significant injury is still occurring and there is not underway a NOAA-approved (in consultation with U.S. EPA) action plan to adequately reduce or eliminate the threat of significant injury or significant injury to the Sanctuary, NOAA may file an appeal with the SWRCB within 30 days of the RWQCB action (ref: Section 13320 G-20

of the California Water Code). The SWRCB shall act to confirm, amend or overturn the decision of the RWQCB within 45 days of the appeal being filed by NOAA.

2. If, after the SWRCB acts to confirm, amend or overturn the decision of the RWQCB, in the opinion of NOAA, the SWRCB has not adequately acted, i.e, the threat of significant injury or significant injury to the Sanctuary is still occurring and there is not underway a NOAA-approved (in consultation with U.S. EPA) action plan to adequately reduce or eliminate the threat of significant injury or significant injury to the Sanctuary, NOAA may file an appeal with the MBNMS Joint Review Board (JRB) within 30 days of the SWRCB's action. The JRB shall consist of the Administrator of NOAA (or designee) and the Secretary of California EPA (or designee).

3. After considering information received from NOAA, the SWRCB, the RWQCB, other public agencies and the public, the JRB shall recommend to the SWRCB the confirmation, amendment, or overturning of the decision of the SWRCB. The JRB shall make such recommendation within 30 days of receipt of the appeal to it.

4. The SWRCB shall act to confirm, amend or overturn its decision within 60 days of receipt of the JRB's recommendation.

IX. RIGHTS OF APPEAL OR PETITION UNDER FEDERAL OR CALIFORNIA STATUTE OR REGULATION

This MOA is not intended to limit any rights of appeal or petition of any signatory to this MOA existing under Federal or California statute or regulation.

X. MODIFICATION PROVISIONS

This MOA shall become effective upon signature by all parties hereto.

Any amendment to this MOA shall only be in writing and shall become effective only upon the signature of all signatory agencies. Any amendment to this MOA shall be published in the Federal Register.

An individual signatory agency may withdraw from this MOA only if the Procedures for Referral in Section VIII have been exhausted on at least one occasion and the resolution of the subject dispute is not acceptable to the withdrawing party. Upon notice that a party is considering withdrawing, NOAA shall publish a notice in the Federal Register stating the reasons for

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ultimately decides to withdraw, it shall give the other parties at least 90 days notice of intent to withdraw, and NOAA shall

publish a notice in the Federal Register announcing the withdrawal.

This MOA shall become invalid only if NOAA or the SWRCB withdraws in accordance with the above procedures.

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