

NOTICE OF PUBLIC HEARING

Order No. R1-2018-0011

Waiver of Waste Discharge Requirements
and
General Water Quality Certification
for
Road Management and Activities
Conducted Under the Five Counties Salmonid Conservation Program
In the
North Coast Region

NOTICE IS HEREBY GIVEN that North Coast Regional Water Quality Control Board (Regional Water Board) will conduct a public hearing to consider adoption of proposed Order No. R1-2018-0011, renewal of the *Waiver of Waste Discharge Requirements and General Water Quality Certification for Road Management and Activities Conducted Under the Five Counties Salmonid Conservation Program In the North Coast Region* (proposed Order).

Copies of the proposed Order are on file and may be inspected or copied at the Regional Water Board office during normal business hours or viewed at:

https://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/

The public hearing is scheduled for May 17, 2018, at 8:30 a.m., or as announced in the Regional Water Board's agenda. The meeting will be held in the Regional Water Board Hearing Room, 5550 Skylane Boulevard, Suite A, in Santa Rosa, California. At the public hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Order.

Overview

The Five Counties Salmonid Conservation Program (5C Program) includes most of the North Coast Region, covering the counties of Humboldt, Del Norte, Trinity, and portions of Siskiyou and Mendocino, collectively referred to as the 5C Counties.

In 1997, Coho salmon was listed as a "threatened" species under the Endangered Species Act. As a result of this listing, supervisors from the 5C Counties initiated the 5C Program in 1998. That same year, as part of the program initiation, the 5C Counties commissioned a U.C. Davis study to evaluate the effects of county land use regulations and management on anadromous salmonids, *Effects of County Land Use Regulations and Management on Anadromous Salmonids and their Habitats: Humboldt, Del Norte, Mendocino, Siskiyou and Trinity Counties, CA*. The study conclusions had three main recommendations:

- Improvements in on-the-ground-maintenance activities
- Standardization of road and bridge maintenance policies
- Continuing education and training of roads personnel

The 5 Counties Roads Manual (5C Roads Manual) was developed in 2002 as a result of these findings. Presently, the 5C Counties implement wholly, or in part, the 5C Program

including implementation of the Best Management Practices (BMPs) within the 5C Roads Manual.

There are more than 25 Total Maximum Daily Loads (TMDLs) in the North Coast Region addressing sediment impaired watersheds and impacts to cold water fisheries habitats. Although it has long been recognized in the TMDLs and scientific literature that roads are a significant source of sediment, discharges from roads and road maintenance activities have not comprehensively been addressed.

In 2008, as part of the nonpoint source (NPS) planning effort, the North Coast Regional Water Quality Control Board recognized the opportunity to use the already established 5C Program as a way for counties and other dischargers to achieve both NPS compliance and TMDL implementation for road maintenance activities. In May 2013, the Regional Water Board adopted Order No. R1-2013-0004, *Waiver of Waste Discharge Requirements and General Water Quality Certification for County Road Management and Activities Conducted Under the Five Counties Salmonid Conservation Program (5C Waiver)*.

There are three main components to the 5C Waiver and all three rely on the implementation of procedures and Best Management Practices (BMPs) contained within the 5C Roads Manual. These components are a Waiver of Waste Discharge Requirements, a General 401 Water Quality Certification, and a Monitoring and Reporting Program.

The 5C Waiver covers all road maintenance and project activities within the Manual, with the exception of Bridge Painting. The main categories of activities covered are road maintenance, culvert maintenance, soil disposal, maintenance yard management, bridge maintenance, emergency maintenance, snow and ice removal, and inventorying and treatment of legacy sediment discharge sites.

The 5C Waiver includes a General 401 Water Quality certification (General WQ Certification) which provides certification to county projects requiring Section 404 permits from the U.S. Army Corps of Engineers. In order to streamline the amount of paperwork counties need to submit, the 5C Waiver includes a provision allowing for use of the California Department of Fish and Wildlife (CDFW) 1602 Agreement application to meet the requirements for application for General WQ Certification.

The 5C Waiver contains a Monitoring and Reporting Program (MRP). The MRP contains four types of monitoring, which are outlined in Chapter 10 of the 5C Manual. They are implementation, effectiveness, photo point, and project monitoring. Implementation and effectiveness monitoring are required for all projects. Photo point and project monitoring are reserved for more complex projects that may require an evaluation of BMP performance over an extended period of time, and are implemented at the discretion of the Executive Officer.

Annual reports are also required as part of the MRP. Annual reports are required to contain summaries of implementation and effectiveness monitoring, corrective actions taken in the event of BMP failure, progress on legacy site inventories and treatment, illicit discharge investigations, and trainings attended by county road staff.

As the lead agency for development of the 5C Waiver, Regional Water Board staff prepared a Mitigated Negative Declaration (MND). One of the goals in preparing a MND is to reduce the time and cost for CEQA analysis for projects done under the 5C Program and to free up county resources for project implementation. The MND CEQA document is designed to cover all projects done under the 5C Program, eliminating the need for individual analyses to be done. Regional Water Board staff collaborated with CDFW staff to ensure that the MND would meet their needs as a project reviewing agency. Waivers are in effect for up to five years, after which, they expire or can be renewed, revised and readopted, or replaced. The current 5C Waiver will expire on May 2, 2018.

Proposed Order

Adoption of the 5C Waiver by the Regional Water Board in 2013 established a successful waiver program that relies, in part, on the 5C Program and individual counties' administration of its existing water quality protection programs. Proposed Order No. R1-2018-0011, renews the 5C Waiver and includes the following substantive revisions:

- The geographic extent is expanded to allow for coverage of all county and private rural roads throughout the North Coast Region (this includes new CEQA environmental analysis to cover the expanded geographic area);
- The proposed Order will allow 5C Waiver coverage of projects within the channels and/or on the banks of watercourses containing fish and/or that supplies water for domestic water sources; and
- The proposed Order establishes a two tiered structure, with covered activities grouped according to the level of potential impacts to water quality:
 - Activities that do not require certification pursuant to 33 U.S.C. section 1341 (401 water quality certification) and have a low potential to impact water quality are eligible for Category A. No application is necessary for coverage of Category A projects.
 - Activities with a moderate potential to impact water quality and that may require a permit from the Army Corps of Engineers pursuant to section 404 of the Clean Water Act require that counties apply for coverage under Category B and Regional Water Board review and evaluation for compliance with the 5C Waiver.

Document Review

Copies of the proposed Order, the Mitigated Negative Declaration, related documents, and comments received are on file and may be inspected or copied at the Regional Water Board office during normal business hours or viewed at:

http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/

http://www.waterboards.ca.gov/northcoast/public_notices/public_hearings/npdes_permits_and_wdrs.shtml

For further information, please contact Regional Water Board staff member Maggie Robinson (707) 576-2289 or Maggie.Robinson@waterboards.ca.gov.

Public Comment Period

The proposed Order was available for public review and comment for 45-days beginning on February 2,, 2018 and ending at 5:00 p.m. on March 19, 2018.

The Mitigated Negative Declaration was submitted to the State Clearinghouse on February 2, 2018, and will have a 30 day public comment period ending at 5:00 p.m. on March 5, 2018.

Written comments may be submitted by US mail, email, or fax to Maggie Robinson at:

North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
Maggie.Robinson@waterboards.ca.gov
(707) 523-0135 Fax

Public Hearing Procedures

The public hearing to consider adoption of the draft Wavier has been scheduled for May 17, 2018, in Santa Rosa at 8:30 a.m., or as announced in the Regional Water Board's agenda. The meeting will be held in the Regional Water Board Hearing Room, 5550 Skylane Boulevard, Suite A, in Santa Rosa, California. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed Order and Mitigated Negative Declaration, or take another action.

It is the policy of the State and Regional Boards to discourage the introduction of surprise testimony and exhibits (Cal.Code Regs. tit. 23, § 648.4). Written material received after the above dates will not be accepted except at the discretion of the Regional Water Board Chair. Untimely written material will not be accepted or incorporated into the administrative record if doing so would prejudice any of the parties at the hearing. . The Chair may choose to modify this rule upon a showing of severe hardship (California Code of Regulations, title 23, sections 648.1 and 648.4).

All those who plan to testify at the hearing must submit written statements to the Regional Water Board before the close of the public comment period. The statements should provide the name of the witness, their qualifications (if an expert), and the scope of their intended testimony. Testimony at the above-scheduled hearing may summarize or explain timely submitted or late accepted written evidence, but shall not add new evidence. The time constraints for oral testimony or comments will be set by the Regional Water Board Chair and usually allow no more than 15 minutes for Regional Water Board staff and the Discharger and three minutes for other interested persons. A timer may be used and speakers are expected to honor the time limits. Where speakers can be grouped by affiliation or interest, such groups will be expected to select a spokesperson and not be repetitive.

For directions to the North Coast Regional Water Quality Control Board offices, please refer to: <http://www.waterboards.ca.gov/northcoast/contact.html>. Parking for the meetings is available onsite. Individuals requiring special accommodations are requested to contact Patti Corsie, Executive Assistant, at (707) 576-2307 or Patti.Corsi@waterboards.ca.gov, at

least five days prior to the meeting. TTY/TDD/Speech-to-Speech users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Ex parte communications are allowed in this matter subject to the disclosure requirements of Water Code section 13287. A form to assist in this process can be found on the Regional Water Board's website at:

http://www.waterboards.ca.gov/northcoast/public_notices/pdf/2013/130118_NorthCoast_disclosure.pdf.

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed Order. Ex parte disclosures shall not constitute written comments or evidence on a proposed general order. You must provide the comments or evidence by following the procedure and timelines provided above. **Ex parte communications are prohibited for a period beginning 14 days before the board meeting at which the proposed Order is scheduled for board action.** For communications concerning any issue in this proceeding, ex parte communications are prohibited starting on May 3, 2018. If the board does not take action on May 17, 2018, the ex parte prohibition will remain in place until the board, the Chair or the Executive Officer directs otherwise. Once lifted, the prohibition on ex parte communications may be reinstated for 14 days before the day of the board meeting to which the decision is continued. The board will provide notice via the Lyris and the interested parties email lists for this item if the prohibition is lifted and/or reinstated.