

# **California Regional Water Quality Control Board**

## **San Diego Region**

### Response to Public Comments on the Strategy for a Healthy San Diego Bay

**June 10, 2015**

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## ***Introduction***

This document presents the San Diego Water Board's response to written public comments received on the [April 2015 Draft Strategy for a Healthy San Diego Bay](#). The public comment period for this matter began April 16, 2015 and ended May 21, 2015. In addition, a public workshop was held on April 28, 2015 to solicit comments on the Strategy and suggested key areas. During the public review period the San Diego Water Board received six comment letters from the following interested stakeholders.

1. Environmental Health Coalition, May 15, 2015
2. County of San Diego, May 21, 2015
3. Industrial Environmental Association, May 21, 2015
4. National Steel and Shipbuilding Company, May 21, 2015
5. San Diego Port Tenants Association, May 21, 2015
6. Unified Port of San Diego, May 21, 2015

Comments received consisted of either general or specific support for the Strategy, suggested issues to consider during its implementation, concerns with implementation of the Strategy, and/or suggested revisions to the Strategy. The most common concerns raised in the comments provided focused on:

1. Recognizing and protecting all the uses in and around the Bay; including industrial and commercial activities. (see response 3.2)
2. Adequately characterizing risk through monitoring and assessment. (see response 3.3)
3. Conducting source control prior to directing remedial action. (see response 4.6)
4. Providing ongoing opportunities for Stakeholder involvement. (see response 4.7)

All comments submitted have been reviewed and considered. The San Diego Water Board provides the following responses to further clarify the Board's intent with the implementation of the proposed Strategy for a Healthy San Diego Bay.

Full copies of the comment letters received can be viewed on the San Diego Water Board website at:

[http://www.waterboards.ca.gov/sandiego/board\\_info/agendas/2015/Jun/Jun24.shtml](http://www.waterboards.ca.gov/sandiego/board_info/agendas/2015/Jun/Jun24.shtml)

***Letter from the Environmental Health Coalition dated May 15, 2015***

**Comment 1.1**

We support the current San Diego Fish Consumption Study by SCCWRP to provide further assessment of potential health risks to subsistence fishers. However, a concurrent study of contaminants in fish that are caught and eaten would have certainly provided more certainty about the health risks of consuming fish from San Diego Bay.

**San Diego Water Board Response 1.1:**

The San Diego Water Board is conducting a concurrent study of bioaccumulation in San Diego Bay (see Strategy, Appendix A-1). After the Fish Consumption Study and Bioaccumulation Study are complete, any data gaps will be discussed and addressed as part of the overall implementation of the Monitoring Framework (i.e. Step 2 of the proposed Strategy).

**Comment 1.2**

We believe that any current or future studies analyzing fish contaminants should include an analysis of radionuclides. The analysis should include the whole fish as some ethnicities cook and eat whole fish.

**San Diego Water Board Response 1.2:**

This is something that the San Diego Water Board intends to consider as part of the assessment effort to determine whether fish and shellfish are safe to eat (i.e. through implementation Step 2 of the proposed Strategy).

***Letter from the County of San Diego dated May 21, 2015***

**Comment 2.1**

The County is in support of clean water. The use of the public process employed by the Regional Board staff for development of the draft strategy should be commended. The County supports the draft Strategy's proposal to establish priorities in a sound, scientifically-based, consistent, and transparent manner. This aligns well with the County's goal of having stormwater management programs that yield a corresponding return on investment in terms of public and environmental health.

**San Diego Water Board Response 2.1:**

Comment noted.

### **Comment 2.2**

The County would request that Board staff consider the nexus between discharges from the stormwater conveyance system and the identified priorities. If there is a demonstrated nexus with discharges from the stormwater conveyance system and the priorities, then a realignment or revision to current monitoring programs should be pursued rather than adding new requirements to the NPDES permit.

#### **San Diego Water Board Response 2.2:**

The San Diego Water Board will consider this in its implementation of the Strategy and believes that to some extent the Water Quality Improvement Plans allow for this sort of flexibility at the discretion of the stormwater Copermitees.

### ***Letter from Industrial Environmental Association dated May 21, 2015***

### **Comment 3.1**

To promote the efficient use of the Water Board's limited resources, the Strategy Plan should be revised to emphasize that assessment and cleanup decisions will be made in a scientific, risk-based manner, using reasonable assumptions regarding "real-world" exposure conditions. For example, the plan should make clear that, in assessing impairment, the Water Board will focus on whether site conditions pose an unreasonable risk to beneficial uses, emphasizing empirical evidence (as opposed to modeling predictions, especially where the both types of evidence exist and conflict). This should lead to a prioritization of sites where there is a completed exposure pathway, such as fisherman consuming the fish, as opposed to areas where fishing is not observed, or fish tend to be caught and released. It should not prioritize sites simply because there may be a viable PRP. The plan should also be modified to (i) encourage risk and exposure determinations to be made based on realistic assumptions, (ii) clarify that, if impairment is found, all potential sources will be investigated, including non-chemical sources, (iii) emphasize the importance of controlling ongoing sources prior to active remediation, and (iv) expand the criteria for assessing and prioritizing sites to include an evaluation of cost-effectiveness, to ensure that the Water Board's limited resources are allocated in a manner that maximizes environmental benefits and success.

### **San Diego Water Board Response 3.1:**

1. As a matter of clarification, the Strategy is not a "Plan," nor does it attempt to modify the existing Water Quality Control Plan for the San Diego Basin (i.e. Basin Plan) or establish a binding policy; rather, the Strategy is intended to serve as an internal document outlining a process to guide the Board in prioritizing its work and using its limited resources optimally.
2. As such, the Strategy is not intended to provide additional guidance on the appropriate risk based assumptions for individual cleanup sites. However, the San Diego Water Board believes that implementation of the Monitoring Framework (Step 2 of the Strategy) will result in a better understanding of, and therefore more reasonable assumptions regarding, exposure conditions as individual sites are considered in the future. The resulting work realignment (Step 5 of the Strategy) will result in more informed (i.e. strategic) cleanup priorities and decisions.
3. As is currently practiced, all potential sources of contamination are evaluated when considering an impairment, and available site-specific risk exposure values for current or anticipated/desired use will be used. Otherwise, reasonably protective and/or default values are considered. The Strategy does not modify this approach. However these comments will be considered in the implementation of the Strategy.
4. The San Diego Water Board attempts to use all available and relevant information prior to directing remedial actions; however, determining the sufficiency of the information available is, and will continue to be, a point of discussion with each action that we take.

#### **Comment 3.2**

Consistent with the Water Code, the Strategy Plan should also be revised to reflect the range of uses of San Diego Bay. Limiting the Plan to focusing on swimming, fishing, and a healthy benthic environment will have the impact of limiting other uses. The Water Code recognizes the importance of both environmental and economic uses, and requires the consideration of "all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible," in making decisions regarding site assessment and cleanup. Cal. Water Code § 13000. The Water Code further acknowledges that the Water Boards' regulatory efforts should be targeted towards preventing unreasonable risks, as opposed to forcing pristine conditions.

The California Water Code implicitly recognizes that industrial uses, including industrial discharges, are acceptable uses of water bodies as long as discharges from those facilities do not unreasonably impair other beneficial uses. For example, the Water Code recognizes that “it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses” (Cal. Water Code §13241), and limited the definition of pollution to those discharges that unreasonably affect beneficial uses. See Cal. Wat. Code § 13050(l). If it were otherwise, then permits for the discharge of any wastewater could not be issued since there is at least some impact on waters associated with any discharge.

As I stated at the work shop, a healthy and beneficial San Diego Bay should, and does support an array of recreational, commercial and industrial activities, including shipbuilding and repair, shipping and trade, marinas, yacht sales, boatyards, commercial and sport fishing, cruise ship activities, yacht clubs, aerospace and airport industries, the hospitality industry, merchants, and the United States Navy. The Strategy Plan therefore should promote the vibrancy and diversity of the waterfront, through a balanced, risk-based strategy. The Strategy Plan should therefore expand the “key uses” of the bay to reflect all of the purposes for which the bay is currently used, and to foster a balanced approach towards future regulatory efforts that will promote the continued vitality of San Diego Bay, both ecologically and economically. Just as in land zoning, perhaps certain areas will be designated for recreation and have stricter cleanup criteria, while other areas will preserve a working waterfront that provides economic benefit to the citizens of San Diego, with less stringent cleanup criteria, due to lower risks of exposure.

### **San Diego Water Board Response 3.2:**

The San Diego Water Board has revised language in the Strategy to clarify the distinction between the general concept of “uses” in San Diego Bay, Beneficial Uses as defined in the Basin Plan, and the term “key uses” as defined in the Strategy. The Strategy acknowledges the multiple uses in the Bay, clarifies the Board’s existing obligation to protect all Beneficial Uses, and clarifies how it intends to prioritize this effort and address any conflict with competing uses.

The San Diego Water Board believes that the Strategy should remain focused on prioritizing efforts to address the key uses of Bay waters for recreation, fish and shellfish consumption, and ecosystem health. The San Diego Water Board does not support expansion of the “key use” categories beyond beneficial uses of the water, and notes that including all beneficial uses as key uses would essentially prioritize all beneficial uses the same, undermining the intent of the Strategy to serve as a prioritization tool. In identifying “key uses,” the Strategy is not suggesting that designated Beneficial Uses of the Bay be ignored when individual actions, such as remedial actions, are considered.

**Comment 3.3**

The IEA supports a systematic, risk-based approach to addressing environmental problems in San Diego Bay, supported by appropriate scientific data. IEA therefore agrees that assessment and monitoring should be the initial focus of the Strategy Plan. See Strategy Plan, at 5-10 (discussing assessment in advance of prioritization). Only after appropriate data is collected and necessary data gaps are filled, can accurate decisions be made regarding the need for cleanup, and the prioritization of sites. As such, the Strategy Plan should be revised to indicate that the Water Board will focus on collecting the data needed to assess the relative impairment (if any) across sites, and prioritize future cleanups based according to risk.

IEA further agrees that the Water Board's strategy should be to focus on monitoring, assessment, and cleanup (if necessary) on key areas that are already heavily used for fishing, swimming, or other recreational use, as opposed to areas that are not intensively used by the public. See Strategy Plan, at 4.

**San Diego Water Board Response 3.3:**

The Strategy attempts to prioritize key areas in terms of intensity of a key use, recognizes the need for monitoring and assessment for the Board to work effectively, and acknowledges that an initial assessment is one of the first steps for implementation. The Strategy also acknowledges, however, that until Bay priorities are established, goals are identified, and work is realigned in keeping with those priorities and goals, the Board will continue with its current San Diego Bay work (see Interim Bay Work).

Also see Response 3.1.2 regarding how Step 2 of the Strategy will assist with Cleanup priorities and decisions.

***Letter from National Steel and Shipbuilding Company (NASSCO)  
dated May 21, 2015***

**Comment 4.1**

A. The Strategy Plan Should Be Revised To Account For *All* Beneficial Uses Of San Diego Bay, Including Industrial, Commercial and Navigational Uses.

As an initial step, the Draft Bay Strategy purports to “identify key uses applicable to San Diego Bay and key areas associated with those uses.” Draft Bay Strategy, at 2. However, the Draft Bay Strategy focuses only on a narrow subset of beneficial uses (recreation, human consumption of fish and shellfish, and habitats and ecosystems), and does not adequately consider the full range of uses in the bay. The Draft Bay Strategy should therefore be updated, consistent with the Water Code, to ensure consideration of “all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” Cal. Water Code §§ 13000.

#### **San Diego Water Board Response 4.1:**

See response 3.2 regarding Beneficial Uses.

#### **Comment 4.2**

A.1 San Diego Bay Is A Working Waterfront And The Bay Strategy Should Support Its Continuing Vitality, Consistent With The Water Code And Other San Diego Bay Planning Documents.

As recognized in other planning documents, San Diego Bay is a working waterfront; accordingly, any bay strategy that is ultimately adopted must account for the industrial uses of the bay in setting goals and cleanup priorities. For example, the San Diego Port District’s Port Master Plan provides, among other things, that “[the Harbor Drive subarea of San Diego Bay] consists entirely of one major shipbuilding plant, National Steel and Shipbuilding Company. In terms of employment and economic impact, it is one of the most important industries in San Diego County, and the Port Master Plan supports its continuing viability.” Port Master Plan, at 75.

Similarly, the Water Code acknowledges industrial uses as acceptable, provided they do not unreasonably impair other beneficial uses, and recognizes the need to balance environmental and economic values in exercising regulatory authority. See *e.g.*, Water Code §13241 (noting that water quality may be changed without unreasonably affecting beneficial uses); Water Code § 13000 (discussing the need to consider “all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible,” when making remedial decisions).

NASSCO prides itself on its environmental track record, and its contributions to the San Diego community. Like the Water Code and Port Master Plan, the Draft Bay Strategy should be revised to recognize industry as a “key use” of the bay, with the goal of developing a balanced approach to setting cleanup priorities and levels under this strategy, so as to preserve the continued vitality of San Diego’s working waterfront and associated community benefits.

#### **San Diego Water Board Response 4.2:**

See response 3.2 regarding Beneficial Uses.

#### **Comment 4.3**

2. The San Diego Bay Strategy’s List Of Assessment And Prioritization Criteria Should Be Expanded To Reflect A Risk-Based Approach To Site Evaluation.

To that end, the key uses and questions used to assess various sites around the bay should be updated to emphasize a risk-based approach centered upon realistic assumptions, in order to better prioritize sites for cleanup. For example, the plan lists only a handful of questions that must be answered in evaluating and prioritizing a site, all of which are focused upon:

- (1) whether the waters are suitable for recreation?
- (2) whether fish and shellfish are safe to eat? and
- (3) whether habitats and ecosystems are healthy?

However, there are many additional questions that should be considered in order to fully evaluate and prioritize a given area, including, among other things:

- (4) which beneficial uses exist at the site?
- (5) does the public have regular access to the site? does the site pose significant risks to humans or wildlife under real-world circumstances?
- (6) is the impairment observed (if any) attributable to chemicals, or other sources (such as, for example, physical stressors or invasive species?)
- (7) have ongoing sources been controlled?
- (8) if chemistry is identified as a source of impairment, can such impairment be addressed through monitored natural attenuation? will active cleanup of this area result in greater harm to beneficial uses than leaving sediments in place? and
- (9) what are the impacts of the cleanup to the San Diego economy? is it cost-effective to spend resources on this particular site?

In sum, and consistent with the Water Code, the Draft Strategy Plan should acknowledge the value of industrial and commercial uses of the bay, in addition to the other uses addressed in the plan, and focus on whether observed conditions pose any significant risks to humans or the environment. In doing so, the plan should make clear that when the Regional Board is assessing and prioritizing sites for cleanup, it will reasonably balance the total values involved, and give adequate consideration to the economic, commercial and industrial uses of the bay—all of which are equally important to the San Diego community.

**San Diego Water Board Response 4.3:**

In order to reduce monitoring demands and corresponding resources for assessment, the San Diego Water Board believes that it is consistent with the Board-adopted Monitoring and Assessment Framework and therefore appropriate to limit the focus of the Bay-wide monitoring and assessment effort to the three stated questions regarding the key uses. (See Step 2; Initial Assessment)

The questions stated in the Strategy to consider during prioritization (Step 3) were merely intended as examples, not as a comprehensive list.

Moreover, some of the questions proposed by the commenter are already considered elsewhere in the Strategy. For instance, restricted access at a site would render it a low-priority as a key area because of its low intensity of use.

Additionally, by implementing the monitoring and assessment framework (Step 2) stressor and source identification (including physical impairments and invasive species) will be considered as part of steps M2 (Stressor Identification) and M3 (Source Identification).

Many of the other questions in the comment will continue to be raised and considered as part of the implementation of the Strategy and the site cleanup process.

Also see response 4.7 regarding Stakeholder Involvement.

**Comment 4.4**

B. The Strategy Plan Should Methodically Assess and Prioritize Sites For Cleanup.

NASSCO supports the Regional Board's goal of ensuring adequate information to support prioritization and cleanup of areas of concern around the bay. Accordingly, NASSCO suggests that the Draft Bay Strategy be revised to incorporate a phased approach to assessing and prioritizing sites. As discussed in further detail below, the Draft Strategy Plan should make clear (i) that existing data gaps around the bay will be identified and filled, so as to characterize the nature and extent of impairment (if any) before resources are spent on cleanup; (ii) that, if impairment is identified based on the existing data, then the Regional Board will investigate the potential sources of impairment (including non-chemical causes), and (iii) if impairment and ongoing sources are identified, then all ongoing sources be controlled prior to spending the Regional Board (and stakeholders') limited resources on remediation.

#### **San Diego Water Board Response 4.4:**

See response 3.1 regarding the use of the term "Plan", current cleanup practices, and the intent of the Strategy.

#### **Comment 4.5**

##### **B.1 The Strategy Plan Should Focus On Identifying And Filling Data Gaps, So That Cleanup Priorities Can Be Set On A "Worst-First" Basis**

While the Draft Bay Strategy generally recognizes that assessment should occur before response actions are prioritized, it contains little guidance for regulators and stakeholders regarding how individual sites should be evaluated. NASSCO proposes that the Draft Strategy Plan be revised to set forth a methodical framework for approaching assessment and cleanup that requires the Regional Board to identify and fill any critical data gaps in the bay prior to spending resources on further cleanup actions, so that resources can be allocated in a targeted manner towards cleanup of the most polluted sites and/or those where risks are greatest due to increased uptake by wildlife or increased likelihood of human exposure due to intensive use. Further, in prioritizing sites, the Regional Board should consider additional questions beyond those set forth on page 9 of the Draft Strategy Plan, as described above.

### **San Diego Water Board Response 4.5:**

The Strategy is not intended to provide additional detail on how individual sites will be evaluated, but it is intended to provide guidance on prioritizing which sites to focus on using the framework identified in the Strategy. The San Diego Water Board will strive to fill data gaps relevant to the Bay-wide monitoring plan, and its program staff will continue to do the same on site-specific cleanup actions. It is the intent of the Strategy to have the Bay-wide monitoring data assist with the assessment of the site-specific cleanup actions where possible.

A "worst-first" approach is one alternative that will be considered during the Prioritization step (Step 3) and/or Work Realignment (Step 5).

Also see response 3.1.1 regarding use of the term "Plan."

#### **Comment 4.6**

### **2. The Strategy Plan Should Be Revised To Clarify That Ongoing Pollution Sources Will Be Controlled Prior To Cleanup**

Because the stated purpose of the Draft Bay Strategy is to "guide the San Diego Water Board in using its resources optimally to protect and restore the health of San Diego Bay" (Draft Strategy Plan, at 1), the plan should be revised to provide clearer guidance regarding the importance of source control.

It is axiomatic that source control should be achieved prior to active remediation of sediment. See *e.g.*, Resolution 92-49, at III.E.1; EPA's Contaminated Sediment Management Strategy, EPA-823-R-98-001 (Apr. 1998), at 54 (recognizing pollution prevention and source control as methods that will allow contaminated sediments to recover naturally without unacceptable impacts to beneficial uses). Failing to fully implement source control prior to remediation risks recontamination, including the possibility that enormous sums of public and private money could be spent on successive cleanups, without achieving significant permanent changes in sediment conditions.

While the plan recognizes source control as an element to be considered with regard to improving conditions in the bay, it includes very little, if any, discussion regarding the need for source control prior to remediation. See Draft Bay Strategy, at A-1 (indicating that the goal of the Draft Bay Strategy is to “guide the San Diego Water Board in using its resources optimally to address protection, *pollutant source control*, and clean-up in San Diego Bay”) (emphasis added). The Draft Bay Strategy should therefore be updated to make clear that full source control will be required prior to spending resources on remediation.

#### **San Diego Water Board Response 4.6:**

The San Diego Water Board concurs that source control is critical to water quality improvement and will continue to require source control measures when and where necessary as part of site remediation (and other programs as well). Pollutant sources in watersheds must be controlled to the extent that they won't impair the beneficial uses of receiving waters including cleaned up sediment sites. The importance of source control is adequately described in the Strategy, so no changes were made.

#### **Comment 4.7**

##### **C. The Planning Process Should Provide Opportunities For Stakeholder Participation**

In addition to the above comments, NASSCO also requests that the Regional Board continue to provide opportunities for stakeholder involvement throughout the planning process, including with regard to the development of any workgroups created to advise on issues related to the Draft Bay Strategy.

#### **San Diego Water Board Response 4.7:**

The San Diego Water Board is committed to providing additional opportunities for stakeholder involvement throughout the Strategy's implementation process. For example, Directive No. 6 of Tentative Resolution No. R9-2015-0086 states “The San Diego Water Board directs its Executive Officer to continue to provide opportunities for stakeholder involvement throughout the implementation of the Strategy.”

***Letter from the San Diego Port Tenants Association dated May 21, 2015***

**Comment 5.1**

The SDPTA is concerned that, overall, the Bay Strategy deemphasizes the value of San Diego Bay's working waterfront by not including commercial and industrial uses as "key uses" that must be considered when setting priorities under the Bay Strategy...

... Given the substantial benefits that our members bring to the San Diego community, the SDPTA believes it is critical that commercial and industrial uses are given due consideration in the development of strategies and goals that affect San Diego Bay.

**San Diego Water Board Response 5.1:**

See response 3.2 regarding Beneficial Uses.

***Letter from the Unified Port of San Diego dated February 6, 2015***

**Comment 6.1**

At the April 28, 2015 Strategy workshop, several attendees encouraged the Regional Board to look closely at what the District is doing in its integrated planning efforts and the significant development happening in south San Diego Bay. The District supports this comment and offers the following information on our integrated planning process. The District recently embarked on the first phase Vision Plan of the comprehensive Integrated Port Master Plan Update that will serve as a long-term guide to carry the District through the next 50 years. The process for creating the Master Plan Update will continue over several years, with opportunities for public input throughout the process. The Master Plan Update provides a unique opportunity to examine how the port, San Diego Bay and the tidelands affect the entire region, including land and water uses and critical upland links. The effort is intended to help guide future land and water' uses on District tidelands and lead towards modernizing the District's Port Master Plan. As both of these Bay-wide planning efforts move forward concurrently, it is important that our agencies work together in a collaborative relationship and set priorities in a way that efficiently considers resources.

### **San Diego Water Board Response 6.1:**

The San Diego Water Board recognizes that it is important to be aware of existing and developing planning efforts relative to the Bay and has revised the Strategy to acknowledge efforts such as the Port District's Master Plan, the Integrated Natural Resource Management Plan, and the Water Quality Improvement Plan, and our intent to evaluate them as part of the implementation process.

#### **Comment 6.2**

The District supports the Regional Board's approach to characterize the Bay with the three overarching uses (recreation, consumption of fish, and ecosystem health) defined in the Strategy. Ensuring those uses are protected will lead to other objectives in the Water Quality Control Plan for the San Diego Basin being achieved.

It is important to recognize, however, that those uses need to co-exist with other water dependent uses including navigation, maritime, and military which are cornerstones for our seaport and working waterfront. The District encourages the Regional Board to work with stakeholders to achieve a balance of Bay uses, while continuing to improve overall conditions in the Bay.

The District also encourages the Regional Board to consider implementation efforts designed to protect or enhance the Bay's minimally impacted areas. Such ecosystem enhancement projects could utilize grant funding and collaborative approaches that may result in a better return on investment when compared to administering small scale (relative to the Bay) dredge projects addressing a site-specific pollutant issue. In addition, source control strategies should continue to be encouraged upstream to minimize or eliminate ongoing sources.

### **San Diego Water Board Response 6.2:**

See Response 3.2 regarding Beneficial Uses and Response 4.7 regarding the Board's commitment to stakeholder involvement.

Through overall Strategy implementation, especially Step 3, the San Diego Water Board will consider the most appropriate approaches, including that of addressing the Bay's minimally impacted areas, in larger scale.

See Response 4.6 regarding Source Control.

**Comment 6.3**

The District recommends that the Regional Harbor Monitoring Program data be utilized as the foundation of the Bay-wide conditions assessment identified within the Strategy.

**San Diego Water Board Response 6.3:**

San Diego Water Board has added language to the Strategy to further describe the Regional Harbor Monitoring Program and the Board's intent to use its data and structure for implementation of Step 2 of the Strategy.