

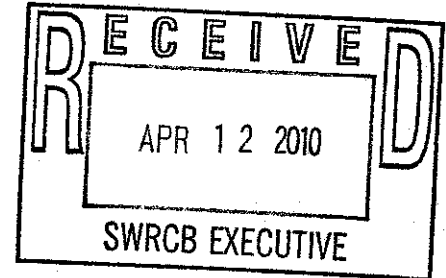


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

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

April 8, 2010

In response, refer to:
SWR/F/SWR3:JD



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

Board Members,

NOAA's National Marine Fisheries Service (NMFS) thanks you for the opportunity to comment on the recent changes to the draft Final Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (draft Final Policy) dated March 22, 2010. NMFS has several concerns and questions regarding the changes that we hope the State Water Resources Control Board (SWRCB) staff can clarify or address in time for the May 4, 2010, adoption hearing for this item.

Given that the already built combined-cycle power-generating units will be given a special BTA status that will allow them to continue to withdraw millions of gallons of water for cooling each day, and that some of these units have already undertaken mandatory mitigation required from the appropriate Regional Water Quality Control Board, how will the efficacy of the mandatory mitigation be evaluated? Is monitoring of the project performance required? This monitoring would be used to show that the projects are actually offsetting the annual entrainment and impingement effects of the units. It is also unclear if SWRCB intends these units to undertake further mitigation projects if the completed projects are found to be less than adequate in their performance.

Further clarification is also needed for the new mitigation project definition and language that states, "It is the preference of the State Water Board that funding be provided to the California Coastal Conservancy, working with the California Ocean Protection Council, for mitigation projects directed toward the implementation, monitoring, maintenance and management of the State's Marine Protected Areas." This language is extremely broad and could be interpreted that mitigation funds may be spent on costs that will not lead to offsetting the entrainment and impingement effects of a facility. The language should be clarified to ensure that mitigation funds generated through this policy are spent only on projects that will directly lead to increased productivity that mitigates for impacts (e.g., habitat restoration projects) and preferably are spent on projects near the impacted area.



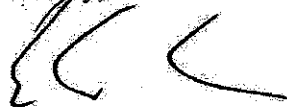
The draft Final Policy also makes it clear that SWRCB will give deference to the assorted State energy agencies in making determinations regarding the implementation timeline and electric system reliability concerns while still maintaining the SWRCB's authority through the "overriding considerations" provision. However, these sections could be strengthened by clarifying that amending the final compliance dates, rather than suspending them, will be the preferred tactic of SWRCB. These sections should also state that facilities will become subject to the interim impingement and entrainment mitigation provision of the draft Final Policy if their final compliance date is delayed past the designated 5-year deadline because of the energy agencies concerns. This will give the power-generating companies further incentive to try and meet the compliance date schedule and prevent potentially unnecessary requests for amendments or suspensions of the compliance dates.

Regarding the proposed changes for the nuclear-fueled power plants, NMFS supports the clear language in the draft Final Policy that the difference in impacts to marine life resulting from any alternative and less stringent requirements for these facilities granted through the special studies process shall be fully mitigated. However, we must again emphasize our concern with the proposed mitigation project language and request that the language be clarified to show that any such project directly lead to increased productivity to offset the entrainment and impingement impacts of the nuclear power plants.

Finally, NMFS supports the added definition of appropriate net sizes for conducting entrainment studies and the inclusion of the smaller 200 micron mesh net to provide a broader characterization of impacts to meroplankton. This addition is expected to yield valuable information needed to properly evaluate the impacts of once-through cooling systems and to plan appropriate mitigation projects.

In closing, NMFS would like to once again thank SWRCB for its efforts to address the impacts of power plants that still utilize once-through cooling systems in California. The draft Final Policy is the result of many years of work by the Staff of SWRCB, other agencies, non-governmental organizations and the private sector. We expect its approval to reduce impacts to marine and estuarine ecosystems while maintaining electrical system reliability. If you have any questions regarding this letter, please contact Joe Dillon of my staff at (707) 575-6093 or Joseph.J.Dillon@noaa.gov.

Sincerely,



Steve Edmondson
Northern California Habitat Supervisor
Habitat Conservation Division

cc: Rodney McInnis, NMFS, Long Beach, California
Bob Hoffman, NMFS, Long Beach, California
Chris Yates, NMFS, Long Beach, California
Dick Butler, NMFS, Santa Rosa, California
Dominic Gregorio, SWRCB, Sacramento, California
Joanna Jensen, SWRCB, Sacramento, California
Nancy Yoshikawa, EPA Region IX, San Francisco, California