Public Comment
Cannabis Policy and Staff Report
Deadline: 9/6/17 by 12 noon

Save Our Seashore

A 501(c)(3) Charitable Organization (EIN 94-3221625)
Founded in 1993 to Protect Marin County's Ocean, Coasts, Estuaries, Watersheds and Creeks
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SWRCB Clerk

September 4, 2017

TO: Commentletters@waterboards.ca.gov

RE: Comment Letter – Cannabis Policy and Staff Report and Cannabis General Order

Since 1993, our organization, Save Our Seashore, has engaged in numerous efforts to protect watersheds in coastal California. As the Seashore's President, my personal qualifications follow:

- I am a Harvard-educated former entrepreneur who for the last 25 years has taken an active role in environmental issues. My wife was valedictorian at Oksterdam University.
- I have served on the Board of many environmental organizations, including the Sierra Club San Francisco Bay Chapter, Audubon Canyon, and Environmental Action Committee of West Marin.
- I was the first non-agency Chair of Marin Municipal Water District Lagunitas Technical Advisory Committee required by Water Board Order WR 95-17.
- I co-authored the TAC's multi-agency woody-debris MOU and was on TAC sub-committee that reviewed Stillwater Science's Salmonid Limiting Factors Study.
- I am on the Tomales Bay Watershed Council and selected projects for a successful $460,000 Proposition 50 grant to fund an Integrated Coastal Watershed Management Plan.

GENERAL CONCERNS: Over the past several years, cannabis grows have had massive impacts on California's creeks and watersheds[1]. Nevertheless Save Our Seashore believes that Proposition 64 can be compatible with environmental protection.

Unfortunately, given tight deadlines, this Cannabis Policy appears to have been necessarily assembled in haste without the careful review typical of the State Board. As a result, the current draft Cannabis Policy is so confusing that it will not only be impossible for any grower to comply with but also impossible for any regulator to enforce.

The Board's 7/7/17 Public Notice (pg 3) states that the State Water Board "*will rely on the CEQA exemptions in Water Code section 13149(b)(1),* which states (emphasis ours) *"actions of the board and the Department of Fish and Wildlife under this section shall be deemed to be within Section 15308 of Title 14 of the California Code of regulations, provided that those actions do not involve relaxation of existing streamflow standards."* But a regulation that is confusing, impractical and inadequate will indeed inadvertently relax existing streamflow standards.

While this draft, when amended, could qualify covered cannabis activities for a CEQA exemption, this draft must also make clear that irrespective of this Cannabis Policy, any action with the potential to impact state waters or state-listed endangered species will trigger CEQA.

Lastly, the 7/7/17 Public Notice (pg 2) references *Water Code § 13149, which* states (emphasis ours): *"The board, in consultation with the Department of Fish and Wildlife, shall adopt principles and guidelines pending the development of long-term principles and guidelines…"*

- **Save Our Seashore urges the draft Policy and Order be considered as interim principles and guidelines that will be in force pending the later development of long-term principles and guidelines that are clearer and more than adequate.**
- **To qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, these Document should be significantly clarified** (thus Save our Seashore offers the following comments and suggestions):

[1] https://www.scientificamerican.com/article/burgeoning-marijuana-market-prompts-concerns-about-crop-rsquo-s-environmental-impact/

CONCERN #1: EXISTING CONDITIONS

The Cannabis Documents refer to "existing" conditions (e.g. "existing" cannabis operations, "existing" roads, etc.), but a date certain must be specified in order to make the determination of a CEQA exemption based on the claim that "existing conditions" when regulated per the Policy can be "seen with certainty" to have no significant environmental impacts.

Section 15125(a) of the CEQA Guidelines states (emphasis ours) that the CEQA baseline is the physical ("existing") environmental conditions "*when environmental analysis is commenced.*"

The 7/7/17 Public Notice states (emphasis ours):" *On June 27, 2016, the Governor signed Senate Bill 8371, which among other things, codified Water Code section 13149 and authorizes the State Water Board to adopt principles and guidelines (requirements) for cannabis cultivation as part of a state policy for water quality control."*

Thus Save Our Seashore believes that "existing" as used in the Policy, General Order and Staff Report necessarily refers to conditions and operations existing on June 27, 2016 and any cannabis related condition (e.g. road, grading, water withdrawal, etc.) commencing after June 27, 2016 should be considered as "new" rather than as "existing."

Conversely, to set a date later than June 27, 2016, would have set off a "land rush" to establish inappropriate projects that would qualify as "existing" when they should be considered as "new."

Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, this Policy should set June 27, 2016 as the date past which projects shall be considered "new."

CONCERN #2: WATER SUPPLY

There has been much debate over how much water cannabis cultivation requires, with NORML claiming that cannabis uses much less water than other California crops. However, even if NORML's figures are accurate, they are good news for California's over-stretched water supply only when cannabis displaces other California crops.

But it appears that cannabis has not and most likely will not displace other California crops…instead cannabis cultivation has and most likely will displace woodlands and rangelands. Thus cannabis will not replace more-water-using crops but rather will displace little-to-no water-use land uses and thus be an added burden on already over-stretched water supplies.

Most California gaged streams are already substantially over-allocated: *"[California] water right allocations total 400 billion cubic meters, approximately five times the state's mean annual runoff. In the state's major river basins, water rights account for up to 1000% of natural surface water supplies*[1]*."* Yet the Policy's "forbearance" process allows an expedited Water Right permit for unallocated streams most of which are not gaged and also likely over-allocate (we note that Policy Table 7 omits the USGS gage on Lagunitas Creek in Marin County).

Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Policy should not allow Small Irrigation Use Registrations (SIUR) on over-allocated or un-gaged steams and set a modest upper limit consistent with water availability on conversions of forest or range land to cannabis cultivation.

1 https://watershed.ucdavis.edu/files/biblio/WaterRights_UCDavis_study.pdf

CONCERN #3: PERFORMANCE AND MODELING STANDARDS

The Policy and Order do not establish measureable and enforceable performance standards, but instead rely on generic language regarding typical to all Basin Plan Discharge Prohibitions and Water quality standards.

As one of many examples, the Order (Attachment A pg. 14, item 24) states, *"Cannabis cultivators shall not discharge in a manner that creates or threatens to create a condition of pollution or nuisance, as defined by Water Code section 13050. "*

Thus a cannabis grower has to comply based on a personal interpretation of generic terms like "creates" or "threatens" of which the regulatory agency may have a different interpretation.

It would be much clearer for both the grower and regulator if each Regional Board were given the authority to establish performance standards appropriate for local conditions and to specify what factors must be considered in modeling compliance.

Save Our Seashore is most familiar with Region 2, which includes in its Napa and Sonoma Vineyard General Waste Discharge Requirements [1] multiple performance and modeling standards for factors including allowable soil loss, peak storm runoff, etc.

As another of many examples of where performance standards are needed, the Cannabis Policy (page 21) states *"Erosion prevention measures may include…upslope storm water diversion."*

Indeed, such a diversion may prevent undue erosion but it will also increase peak flows downslope. On larger parcels, such hydrologic changes could increase downstream flooding and channel instability and/or decrease groundwater recharge.

So a balance needs to be struck between competing mitigations (erosion control vs hydrological changes), but that balance is impossible to achieve without performance standards for both.

Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, this Cannabis Policy should allow Regional Boards to establish measureable and enforceable performance standards.

CONCERN #4: WINTERIZATION PERIOD

The Documents require winterization from November 15th. to April 1, per the Forest Practices Rule[1], but that Rule actually states (emphasis ours) "*Winter Period means the period between November 15 to April 1, except as noted under special County Rules at 14 CCR, Article 13 § 925.1, 926.18, 927.1, and 965.5."*

Those sections provide the following "extended wet weather" County adjustments: 925.1 (Santa Clara) Oct 15-Apr 15; 926.18 (Santa Cruz) Oct 15-Apr 15; 927.1 (Marin) Oct 1-Apr 15; 965.5 (Monterey) Oct 15-Apr 15.

Thus to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, this Cannabis Policy should allow each Regional Board to set a "winterization" period appropriate for local conditions.

[1] http://bofdata.fire.ca.gov/regulations/ca_forest_practice_rules_other_title_14_codes/california_forest_practice_rules/2016_forest_practice_rules_and_act.pdf

[1] http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/vineyard/final_docs/Vineyard%20General%20WDRs%20-%207-17.pdf

CONCERN #5: SLOPE RISK CATEGORIES AND QUALIFIED PROFESSIONALS

For "Low Risk" slopes (less than 30% that do not violating setbacks), the Documents require a "Site Management Plan." For "Moderate Risk: slopes (30-50% that do not violating setbacks) a "Soil Erosion Control Plan" is required. For "High Risk" slopes greater than 50%, cannabis cultivation is seemingly allowed but only with a Waste Discharge Requirement (WDR).

The 30% break between Low and Moderate Risk may have been useful as short-term triage for illegal grows, but it inappropriate and dangerous for a formal Policy (either interim or long-term) given that California has some of the most highly erodible soils found anywhere on earth. USDA data[1] shows that for certain soils, significant erosion could occur on less-than-5% slopes.

Thus Save Our Seashore believes that the slope break points now in that now categorize Risk Areas should be substantially revised downward, with each Regional Board setting standards appropriate for local soil types. Following the Region 2[2] pattern, this would result in:

- Low Risk Areas defined as slopes from 0% to 5%
- Moderate Risk Areas defined as slopes over 5% to 30% and
- High Risk Areas defined as slopes over 30%.

Further, the Documents do not specify performance standards for to judge the effectiveness of either the Site Management Plan or the Erosion Control Plan (see Concern #3).

Also, Attachment A, pg. 19 # 2 appears to say that regulators can deny a grading request for cultivation purposes or roads only if they find that impacts cannot be eliminated. However, this appears to put the burden on regulators to demonstrate impacts when the burden should be on developers to demonstrate no impacts. This section should make clear that the burden is on developers to demonstrate in their application that there will be no impacts from their proposal.

For both the Site Management Plan and the Erosion Control Plan, the cultivator is required only to "consult with" a "qualified professional." But the list of "qualified professionals" (Attachment A pg 5) includes a Professional Land Surveyor and a Qualified Storm Water Pollution Prevention Plan (SWPPP) Practitioner, neither of whom is qualified and both of whom should be deleted. Further, there are different lists of qualified professionals (e.g. Attachment A pg 5 vs pg 70/71).

Further still, none of the Cannabis Documents appear to require the "qualified professional" to actually design the Plan or sign off that work was done according to plan. Instead the cultivator "self-certifies" that a "qualified professional" was merely "consulted."

Thus, under the current draft, a grape grower who is considering cultivating slopes over 5% in Region 2 and is required to prepare an Erosion Control Plan stamped by a civil engineer…could instead be motivated to rent his hillside to a Cannabis grower who could cultivate those same slopes after a phone call to a local surveyor and self-certifying a hand-drawn "Site Management Plan." Such an unintended consequence is unfair and discriminatory.

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should

- **Allow each Region to set slope standards appropriate for local conditions;**
- **Amend Attachment A, pg. 19 # 2 to make clear that developers must demonstrate that there will be no impacts from their proposal;**
- **Amend the list of "qualified professionals" and require plans to be prepared, reviewed and stamped by them to certify work was done per plan.**

[1] https://www.nrcs.usda.gov/wps/portal/nrcs/surveylist/soils/survey/state/?stateId=CA
[2] http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/vineyard/final_docs/Vineyard%20General%20WDRs%20-%207-17.pdf

CONCERN #6: INSTREAM FLOWS

The Cannabis Policy pg 11 states, *"the cannabis cultivator shall maintain a minimum bypass of at least 50% of the streamflow past the cannabis cultivator's point of diversion, in addition to the applicable numeric instream flow Requirements."*

Thus a mere 7 consecutive 50% bypasses would reduce the flow to less than 1% (0.50^7) over the numeric instream flow requirement. This 50% Policy virtually assures that many streams will be reduced to the minimum numeric instream flow requirement.

Yet the Policy's methodology for setting numeric instream flow requirements seems unreasonable, since it is based on an old (1979) model developed by Tessman for Western Dakota streams[1]. California's Mediterranean climate likely demands that minimum streams flows need to be adjusted upward.

Further, the Cannabis Policy appears not to acknowledge that the Tessman minimum stream flows for fish migration may not also be the minimum needed for the geomorphic flows also needed for fish survival. Thus by the Cannabis Policy asserting an unreasonably low streamflow standard, the Policy has defacto manufactured its own CEQA exemption.

In another example of streamflow confusion, the proposed withdrawing of winter water stored for summer use is benign compared to summer withdrawal, but the Policy fails to acknowledge that winter withdrawals may have significant impacts when the stream is over allocated.

Further, winter withdrawals should begin after a greater-than-2-year storm event and end quickly after the flow subsides in order to skim off only the peak of the peak flow. Skimming only the peak of the peak flow protects winter base flow and thus fish migration. Performance standards allow winter withdrawal start and end times to be calibrated to each individual water course and adjusted when the on-average-every-seven-year drought occurs.

In contrast, Attachment A pg 42 notes, *"the surface water diversion period shall not begin until after seven consecutive days in which the surface waterbody's real-time daily average flow is greater than the…applicable minimum monthly instream flow Requirement*….and shall continue for *"any day in which the surface waterbody's real-time daily average flow is greater than the…applicable minimum monthly instream flow Requirement."*

Again, the Cannabis Policy's use of the Tessman calculation asserts that anything above the minimum flow is available for cultivation use. This standard does not address the needed for higher geomorphic flows required for fish survival and general watercourse health.

Yet the Board's 7/7/17 Public Notice (pg 3) states that the State Water Board will rely on the CEQA exemptions in Water Code section 13149(b)(1), which states (emphasis ours) *"actions of the board and the Department of Fish and Wildlife under this section shall be deemed to be within Section 15308 of Title 14 of the California Code of regulations, provided that those actions do not involve relaxation of existing streamflow standards."*

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should revise the minimum flow requirements to allow for higher geomorphic flows required for fish survival and general watercourse health.

[1] Staff Report pg 79: Tessman, S.A. 1979. Environmental Assessment. Technical Appendix E, in "Reconnaissance Elements" of the Western Dakotas Region of South Dakota Study. Water Resource Research Institute, South Dakota University

CONCERN #7: ROADS

The Cannabis Documents do not make clear that roads are part of the "Total Disturbed Area" that will be used to determine the regulatory tier nor is it clear that any road in a riparian setback will trigger a High Risk categorization.

For example, Policy pg 17 (emphasis ours) appears to define the "High Risk" category as any riparian incursion but *"with the exception of activities authorized by CDFW with a Lake or Streambed Alteration Agreement or under a Clean Water Act section 401/section 404 permit."*

A piece of paper documenting a permit will not prevent these riparian incursions from continuing to impact water runoff and creek hydrology. Thus the definition of high risk sites should be clarified to state that sites with any riparian incursion will be treated as high risk sites.

Further, these Documents provide no performance standards, no requirement for a stamped design document and no verification of properly installation for roads (Concern #3). Instead the Documents simply require roads to conform to the Pacific Watershed Roads Manual or the Forest Practice Rules. And if the road conforms to these standards, the Documents assume that there will be no impacts. However, forestry roads are sited by necessity to harvest trees on steep slopes or in riparian zones. The Manual and Rules cannot eliminate these road impacts, but can provide the best possible environmental protection given the necessity to site these roads on steep slopes or in riparian zones.

Cannabis roads, in contrast, are often sited where it is convenient. It is therefore inappropriate and environmentally destructive for the Cannabis Documents to instruct cultivators to rely exclusively on Pacific Watershed Manual guidelines for cannabis cultivation roads.

On Low Risk and Moderate Risk slopes, planning and management of cannabis roads should be included as a separate submittal in the Site Management Plan or Erosion Control Plan and stamped by a qualified professional (See Concern #5). On High Risk slopes, cannabis cultivation is allowed with a Waste Discharge Requirement (WDR), but roads can be developed without a WDR. We instead propose that roads proposed for "High Risk" areas should require a separate CEQA analysis and a WDR. Roads proposed on slopes over 50% should be prohibited.

Also, the Documents suggest reducing cannabis road impacts by avoiding riparian areas and setbacks to "maximum extent practicable," but the impacts from such roads will still be significant. But such terms as "maximum extent practicable" are not easily understood or regulated. Further, this appears to put the burden on the regulator to demonstrate impact when the burden should be on the developer to demonstrate that, cost notwithstanding, there are no physical alternatives that could avoid the riparian areas and associated setback.

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should:

- **Clarify that land disturbed for access roads is included in the Total Disturbed Area that will be used to determine the regulatory tier.**
- **State explicitly that sites with incursions into riparian setbacks (whether permitted or not) will be treated as "High Risk" sites.**
- **Amend the list of "qualified professionals" and require road plans to be prepared by them, reviewed and stamped to certify work was done per plan**.
- **State that roads proposed for "High Risk" areas will require a CEQA analysis and a WDR and that roads on slopes over 50% are prohibited.**
- **State that the burden for proposed riparian setback incursions is on the developer to show that, cost notwithstanding, no other alternatives exist.**

CONCERN #8: STREAM CROSSINGS

As these Documents specify for road design, they also specify the Pacific Watershed Roads (PWR) Manual for design of stream crossings. The PWR Manual provides guidelines that use standardized wet crossings, culverts, and/or grade controls.

The PWR guidelines are known to be acceptably for low slopes (5% or less) and small drainages (under 40-100 acres where the soil type and slope (the "Rational Method) can be used to predict 100-year storm flows. However, as slopes steepen and drainages grow over 40-100 acres, the PWR guidelines become increasingly unreliable[1]. Again, forestry roads and crossings are sited by necessity to harvest trees in and across riparian zones.

The PWR Manual cannot and does not eliminate the resulting impacts, but can provide the best possible environmental protection given the necessity to site these roads and crossings to harvest trees in riparian zones. Cannabis watercourse crossings, in contrast, are often sited where it is convenient. It is therefore inappropriate and environmentally impactful for the Documents to instruct cultivators to rely on Pacific Watershed Manual guidelines in all cases.

Further, as with roads (Concern 3), these Documents provide no performance standards, no requirement for a stamped design document and no verification of properly installation. Also, Appendix A pg 20 (term 5) appears to cut both State and Regional Boards off from their customary review of all stream crossing proposals.

Further still, the blanket reference to qualified professions, even if the errors are corrected (see Concern #5) is not helpful to growers. Bridge design is an engineering specialty and culverts that do not trigger scours or headcuts yet pass both fish and appropriate gravel should be designed by an experienced fluvial geomorphologist (rather than any "qualified professional").

Also, the Documents do suggest reducing impacts from stream crossings by "minimizing" such crossing but the impacts from such crossing will still be significant. But such terms as "minimizing" are not easily understood or regulated. This appears to put the burden on the regulator to demonstrate impact when the burden should be on the developer to demonstrate that, cost notwithstanding, there are no physical alternatives that could avoid having to construct a watercourse crossing.

The criteria for bridge design standards should vary by the Risk category of the area, with PWR guidelines used for Low Risk, but increasing standards for higher risk categories.

Lastly the Order should make clearer that all crossings will require a Lake and Streambed Alteration Permit.

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should state that:

- **The burden for stream crossings is on the developer to show that, cost notwithstanding, no other alternatives exist.**
- **Crossings in Low Risk areas may use the PWR Manual guidelines; Crossings in Moderate Risk Areas require a design by a bridge engineer; Crossings in High Risk Areas should require a separate CEQA analysis and a design by a bridge engineer. Crossings on slopes over 50% are prohibited.**
- **An experienced qualified professional will design all crossings, oversee the work, and stamp that it was done per plan. Culverts shall be designed by an experienced fluvial geomorphologist.**
- **All crossings will require a Lake and Streambed Alteration Permit**

[1] http://www.stillwatersci.com/resources/2001krameretal.pdf

CONCERN #9: SETBACKS

The Order identifies setbacks (Attachment A, pg 16, #36) that appear to be protective. However, the Documents are also highly fragmented and appear to contain so many confusions, exceptions, and inadequate mitigations, that in sum they appear to be less protective than the current "no net loss" regulatory structure.

For example, "High Risk" sites are required to develop a Disturbed Area Stabilization Plan (DAS Plan) (Order, Attach A, pg. 16, Term, #36.) Yet confusingly and inconsistently, roads are defined as exempt form Disturbed Area considerations.

Further, the need for DAS Plan approved by the Regional Water Board Executive Officer (Appendix D, DAS plan) appears to only be required if a compliance cannot be done by November 15th.

A similar confusing situation occurs when the Order (pg 13) states: *"High Risk- Are facilities that have any portion of their disturbed area located within the setback requirements, with the exception of activities authorized by CDFW with a Lake or Streambed Alteration Agreement or Clean Water Act section 404 permits, are classified as high risk and will be assessed the high-risk fee until the activities comply with the setback requirements. It is the Discharger's responsibility to notify the Regional Water Board of compliance with the setback requirements to reassess the annual fee."*

Yet confusingly and inconsistently, the Order (Attach A, pg 16, #36) also appears to allow impacts to these protected areas: *"Variance to riparian setbacks is only allowed if consistent with this Policy and a work plan and compliance schedule are approved by the applicable Regional Water Board Executive Officer."*

Given that such confusions, inconsistencies and slightly altered wordings in the Policy, it is unclear how any proposal could be deemed "consistent with this Policy."

This puts an undue burden on both the grower trying to comply and the regulator trying to administer because it is unclear what submittals and approvals are required by the Order.

There is also a significant environmental omission in the DAS Plan (Order Appendix D), which appears to be focused entirely on erosion control.

This DAS focus is adequate for erosion but not sufficient for restoration because it does not appear to require restoration of the habitat function of the disturbed area (i.e. ecological, riparian, and/or wetland functions).

Likewise, the Order (Attachment A, pg. 25, 33-35) appears to allow impacts within the required setbacks with a mitigation plan that calls for a ratio of 3-1 for loss of oak or riparian trees. But revegetating, even at a higher ratio, does not fully compensate for loss of riparian function.

Also, as noted in Concern #7, the Cannabis Documents do not make clear that roads are part of the "Total Disturbed Area" that will be used to determine the regulatory tier.

Nor do the Documents make it clear that <u>any</u> road in a riparian setback will trigger a High Risk categorization.

Neither conformance to the PWR Manual nor a piece of paper documenting a permit will prevent any road's continuing to impact water runoff and creek hydrology.

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should clear up the confusions, inconsistencies and slightly altered wordings in the Policy.

CONCERN #10: FEDERAL/STATE CONFLICTS

Because cannabis cultivation is legal under California law, but remains prohibited under federal law, these Cannabis Documents do not (and possibly cannot) make clear how either the grower or the regulator can navigate through these contradictory laws.

Attachment A pg 9 makes clear that: *"Cannabis cultivators shall not take any action which results in the taking of Special-Status Plants… or a threatened, endangered, or candidate species…If a "take"…may result from any act authorized under this Policy, the cannabis cultivator must obtain authorization from CDFW, National Marine Fisheries Service, and United States Fish and Wildlife Service, as applicable, to incidentally take such species prior to land disturbance or operation associated with the cannabis cultivation activities. The cannabis cultivator is responsible for meeting all requirements under the California ESA and the federal ESA.*"

However, the specific process that the grower has to follow for "meeting all requirements" of the federal ESA authorities (NMFS and USFWS) is not described in the policy. In some cases (e.g. when a proposal requires a Clean Water Act Section 404 permit), there is an automatic trigger for a "Section 7" consultation with NMFS and USFWS.

However, many proposals that could impact ESA species may not require a Section 404 Permit (e.g. new stream crossings that do not require fill below Ordinary High Water or new cultivation fields that do not impact waters under federal jurisdiction). These cases would require a much more exhaustive "Section 10" consultation with NMFS and USFWS, including a Habitat Conservation Plan. But the Cannabis Documents do not make clear how the grower can initiate a Section 10 consultation if an incidental take is unavoidable.

Further, we understand the technical term "certification" relates solely to the federal "*Clean Water Act Water Quality Certification,"* however the same terminology is used for the state "*Cannabis General Water Quality Certification."* It would seem helpful to disambiguate these two uses so that both growers and regulators can better understand which rules apply.

Attachment A page 8 states; *"If the CWA permit cannot be obtained, the cannabis cultivator shall contact the appropriate Regional Water Board or State Water Board prior to commencing any cultivation activities. The Regional Water Board or State Water Board will determine if the cannabis cultivation activity and discharge is covered by the Requirements in the Policy…"*

We do not believe that the intent of the Cannabis Policy is to re-fight Appomattox and grant a state permit allowing impacts to waters under federal jurisdiction that the federal regulator itself did not grant a permit to allow. Similarly, we do not believe that the intent of the Cannabis Policy is to overturn the permitting authority of the Regional Water Boards.

So it would seem helpful to disambiguate requirements/authorities of the federal Clean Water Act from those of the state Cannabis Policy from those of the Regional Boards so that both growers and regulators can better understand which rules apply.

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, the Cannabis Policy should state clearly how take of federally listed species will be prevented, and if a project has potential to impact such species, then how federal consultation will be initiated.

In order to qualify for a CEQA exemption based on being "seen with certainty" to have no significant environmental impacts, these Documents should disambiguate requirements/authorities of the federal Clean Water Act from those of the state Cannabis Policy from those of the Regional Boards.

Thank you for considering our comments, Jordan Gennet President, Save Our Seashore