



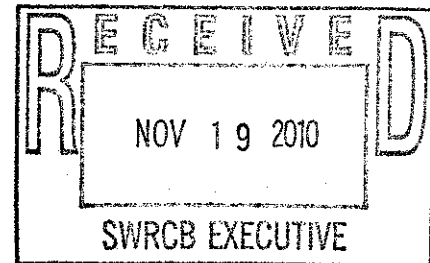
12/14/10 Adoption Hearing  
Once Through Cooling  
Deadline: 11/19/10 by 12 noon

**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
777 Sonoma Ave., Room 325  
Santa Rosa, California 95404-4731

November 18, 2010

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

Tom Howard  
Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814



Dear Mr. Howard:

NOAA's National Marine Fisheries Service (NMFS) thanks the State Water Resources Control Board (SWRCB) for the opportunity to comment on the Proposed Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (Proposed Amendment) issued on September 30, 2010. NMFS objects to the staff's recommended alternative in the Proposed Amendment, which effectively negates the Once Through Cooling (OTC) policy declared effective on October 1, 2010, the day after the Proposed Amendment was issued. For reasons discussed below, NMFS recommends that the SWRCB reject the staff recommended alternative and approve the no-action alternative of the Proposed Amendment, giving the properly developed OTC policy a chance to work.

Numerous Federal and State agencies as well as public and private entities, including the power plant owners and operators, worked for over five years to develop the OTC policy. Alternative cooling systems for California's OTC power plants and the electric grid reliability impacts of the OTC policy were evaluated and considered in the deliberations of the OTC policy. Provisions were included in the OTC policy to adjust the prescribed compliance dates in order to insure electric grid reliability, if the power plant owner or operator shows that the compliance date would threaten reliability. The Proposed Amendment removes this requirement and allows any owner or operator to request a suspension of their compliance date without needing a reason.

The rationale behind the Proposed Amendment is to "Provide additional flexibility to owners or operators of facilities complying with Track 2 Policy requirements, with special considerations given to facilities with combined-cycle units." As stated in the above paragraph, Section 2.B.(2) of the current OTC policy already provides significant flexibility for both short and longer term suspensions of the OTC policy's compliance dates, rendering the rationale behind the Proposed Amendment moot. The Proposed Amendment only serves to open the door for any power plant to submit a request to extend their use of OTC beyond December 31, 2020. No guidelines for



making or denying these requests is presented in the Proposed Amendment, leading NMFS to conclude that approval is likely to be automatic. This will not result in protection of the designated beneficial uses of the State's waters and may generate more entrainment and impingement impacts than the current OTC policy, as noted in recommendation three on page 7 of the Staff Report for the Proposed Amendment. The proposed amendment could result in take of species protected under the Endangered Species Act such as juvenile salmon and steelhead trout and the pelagic larvae of white and black abalone. The Proposed Amendment would also result in additional impacts to essential fish habitat (EFH) as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Essential fish habitat is defined in the MSA as "Those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." Under Section 305(b)(4)(A) of the MSA, when NMFS finds that a federal or state action would adversely affect EFH, it is required to provide conservation recommendations.

The Proposed Amendment establishes a fee-for-permit structure by allowing a power plant owner or operator to pay \$3.00 per million gallons of water withdrawn annually. It is not clear if this structure would result in mitigation funding at sufficient levels to plan, permit, implement and monitor the needed mitigation projects to offset the OTC impacts from the Proposed Amendment in a timely manner. No analysis of the newly proposed fee-structure and its benefits or drawbacks is conducted to support the Proposed Amendment. Several years of funding would likely be needed to build up before sufficient reserves are available for implementation. In the meantime, impacts to the aquatic life beneficial uses of the State and to EFH would continue.

Furthermore, it is no longer clear if an owner or operator electing to extend the use of OTC at their facility would be required to conduct monitoring of the OTC impacts to determine the appropriate size of the mitigation through a habitat production foregone or equivalent analysis. As the record for the current OTC policy shows, this is a crucial component to protecting beneficial uses and EFH. If these provisions are meant to remain in force for all facilities, including those electing to suspend their compliance date, the Proposed Amendment needs to be rewritten to make this explicitly clear.

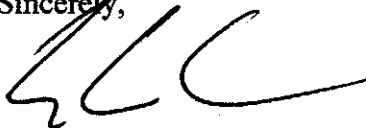
The new implementation provisions in the Proposed Amendment also allow the owner or operators to avoid the mitigation fee structure by conducting pilot scale feasibility studies of fine mesh screens or equivalent measures to maximize the reduction of impingement and entrainment. The proposed language does not define "maximize" nor prescribe how to mitigate for the impacts not addressed by the pilot scale projects. The Proposed Amendment does not restrict the pilot studies to a set time period before they must be shown to work or be terminated. It is foreseeable that a facility could engage in a series of pilot projects without ever truly minimizing or mitigating for their OTC impacts, until the useful life of the facility is reached. This is obviously not protective of the beneficial uses of the waters of the State, or protective of EFH.

The current OTC policy was determined to be effective on October 1, 2010. A series of actions (e.g., submission of proposed implementation plans, establishment of review committees) is set to begin under the OTC policy as soon as three months after the effective date of the OTC policy. The Proposed Amendment would effectively terminate these actions or render them next

to meaningless. To our knowledge, no new information has been generated or brought forward in the SWRCB process to justify the Proposed Amendment. The Proposed Amendment throws out the vetted and approved compliance date suspension process without a single test case, in favor of an undefined approval process for continuing impacts to designated beneficial uses and EFH for the useful lives of the facilities. NMFS urges the SWRCB to reject this premature Proposed Amendment to the OTC policy by approving the no-action alternative.

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](mailto:Joseph.J.Dillon@noaa.gov). Thank you for your efforts to protect and restore the designated beneficial uses of California's waters and your consideration of this recommendation.

Sincerely,



Steve Edmondson  
Southwest Regional Habitat Manager  
Habitat Conservation Division

cc: Bob Hoffman, NMFS, Long Beach, CA  
Chris Yates, NMFS, Long Beach, CA  
Alexis Strauss, EPA Region IX, San Francisco, CA  
Bryant Chesney, NMFS, Long Beach, CA  
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