Comments and Responses to the September 1, 2000 draft Final Functional Equivalent Document, Amendment of the Water Quality Control Plan for Ocean Waters of California

The State Water Resources Control Board (SWRCB) circulated the draft Final Functional Equivalent Document, Amendment of the Water Quality Control Plan for Ocean Waters of California (dFFED) on September 1, 2000 for public comment. The comment period closed November 1, 2000. The comments received and the proposed SWRCB responses are presented below. A revised draft of Appendix B of the dFFED (the California Ocean Plan [Ocean Plan] with the proposed revisions) is attached.

General Comments

General Comment 1: John L. Wallace & Associates/South San Luis Obispo County Sanitation District/Kennedy Jenks Consultants. Commenter believes the proposed amendments may result in the application of unnecessary controls and that the SWRCB should spend additional time to develop a more comprehensive proposal for discharge regulations. The review process was not conducted properly.

Response: Opposition to adoption noted. Noticing was accomplished in accordance with applicable regulations. The SWRCB extended the dFFED comment period to allow all commenters additional time.

General Comment 2: Tri-TAC, Southern California Alliance of Publicly Owned Treatment Works (SCAP), and California Association of Sanitation Agencies (CASA). The review process was not conducted properly and requests a 60 day deadline in the future.

Response: The SWRCB complied with all regulatory requirements. In the future, it may allow additional time to comment than that required by law.

General Comment 3: San Francisco Public Utilities Commission (SFPUC). Commenter strongly supports the goals of the proposed program.

Response: Comment noted.

General Comment 4: Department of Pesticide Regulation (DPR). DPR's comments to the October 1998 draft FED have been addressed.

Response: Comment noted.

General Comment 5: Center for Marine Conservation, et al. Commenter noted typographical errors in Appendix B.

Response: Comment noted and addressed in the revised Appendix B (attached).

General Comment 6: California Department of Health Services. Bacteriological standards are not stringent enough.

Response: This issue is not under consideration at this time. Revising bacterial standards may be addressed in future amendments.

General Comment 7: County of Orange Public Facilities and Resources Department. Need to address the applicability of the Ocean Plan and its numerical limits to municipal NPDES storm water permits.

Response: This issue is not under consideration at this time. This issue may be addressed at a later date.

Issue 1: Replacement of the Acute Toxicity Effluent Limitations in Table A With An Acute Toxicity Water Quality Objective

Comment 1.41: Western States Petroleum Association (WSPA). Additional research should be conducted to better estimate impacts of acute toxicity to the receiving water.

Response: SWRCB agrees that additional research needs to be done. This issue may be considered at a later date.

Comment 1.42: Los Angeles Department of Water and Power (LADWP). The proposed power plant paragraph (Section 7(d)) under Implementation Provisions for Table B implies that acute toxicity testing is required for all power plants regardless of dilution factors.

Response: The SWRCB recognizes the concern and proposes to add the following clarification to the proposed amendment: "…except that limits for total residual chlorine, acute (**if applicable per Section (3)(c))** and chronic toxicity, and instantaneous maximum concentrations in Table B shall apply to…"

Comment 1.43: U.S. Environmental Protection Agency (US EPA). US EPA supports the proposed amendment; however, US EPA is concerned that the proposed amendment is structured such that dischargers will never need to evaluate whether or not the acute mixing zone is protective for marine species. US EPA suggests the following options for documenting compliance with the acute toxicity water quality objective. US EPA Region 9 options are presented below.

Option 1: Test for acute toxicity directly at the acute instream waste concentration (IWC) using marine test species with acute endpoints. Thus, the discharger could include one additional dilution for acute toxicity along with the chronic dilutions, and would need to evaluate the acute IWC at the acute endpoint. (For example, the acute endpoint could be three days, while the chronic endpoint might be seven days).

Option 2: Use a default acute-to-chronic ratio (ACR) of 10 (as recommended in US EPA's Technical Support Document for Water Quality-based Toxics Control) in conjunction with chronic marine test results to evaluate acute toxicity at the acute IWC. The discharger would need to include the acute IWC, but would not need to evaluate the test at the acute endpoint.

Option 3: Calculate a facility-specific ACR and use chronic marine tests to evaluate acute toxicity at the acute IWC. The discharger would need to conduct a study upfront to calculate a facility-specific ACR. After the ACR is calculated, the discharger could proceed as in Option 2 above.

Response: The proposed method for using either acute and chronic toxicity testing based on dilution factors was derived from the US EPA Technical Support Document for Water Quality-based Toxics Control (TSD). A provision is included in the proposed amendment to Chapter IV, for dilution factors ranging from 100:1 to 350:1, that reads: "The Regional Boards may require that acute toxicity testing be conducted in addition to chronic as necessary for the protection of beneficial uses of ocean waters." The SWRCB believes that this option for the Regional Water Quality Control Boards (RWQCBs), of requiring more testing plus following the guidelines in the TSD, provides adequate protection of ocean waters.

Comment 1.44: Tri-TAC/SCAP/CASA, Sanitation Districts of Los Angeles County. Commenters support proposed amendment with the following changes: (a) Commenters recommend that dilution factors be consistent between the Issue text and Appendix B in the dFFED (300:1 versus the intended number of 350:1); (b) Commenters recommend that specific criteria be developed for those dischargers that have dilution factors between 100:1 and 350:1 to determine the necessity of acute testing versus chronic testing as acute testing is costly, time consuming and subject to variability; and (c) The commenters also recommend that other methods be used to assess the size of the acute mixing zone as described in US EPA's TSD.

Response:

(a) The error in the text will be changed from 300:1 to 350:1;

(b) SWRCB believes that determination for acute toxicity testing is already consistent and well documented. The US EPA TSD provides the guidance that has been incorporated into the Ocean Plan to determine whether acute and/or chronic toxicity testing should be conducted based on the dilution factor for a specified ocean waste discharge.

The acute mixing zone is site-specific because it is based on the initial dilution zone or chronic mixing zone designated for each ocean outfall. The initial dilution zone is determined using a computer model that requires site-specific inputs.

SWRCB disagrees with the proposed addition of language requiring the RWQCBs to provide data to support a decision to add acute toxicity testing to a permit. [It is not a function of the RWQCB to provide discharge data]. SWRCB has recommended that chronic, rather than acute, testing be conducted for ocean discharges with minimum dilutions in the range of 100:1 to 350:1; and

(c) SWRCB disagrees with the proposed change from an established mixing zone to the "drifting organism" method. In the case of the acute toxicity mixing zone, the decision to use it is based on the conservative nature and level of protection provided that would produce negligible or no effects on populations of critical species in the receiving water. The 10 percent acute mixing zone is determined as a percentage of the initial zone of dilution based on computer modeling (as mentioned above), therefore the zone is as representative of effluent mixing and the receiving water environment as possible using the latest information available.

Comment 1.45: Sanitation Districts of Los Angeles County. Commenter supports proposed amendment and recommends that it be modified to promote consistency in determinations of the need for acute toxicity testing by RWQCBs. The commenter also recommends that the acute toxicity provision be amended to allow site-specific determinations of acute mixing zones

Response: Please refer to the response to comment 1.44 above.

Comment 1.46: Tri-TAC/SCAP/CASA. Commenters support the recommendation regarding the selection of acute and chronic toxicity testing. We understand that some stakeholders are recommending that the SWRCB require both chronic and acute toxicity tests for all ocean dischargers for protection of human health and marine life. This recommendation is based on the argument that most acute tests give more rapid results than chronic bioassays, so severe toxicity problems will be identified and remedied more quickly by dischargers and that not all chronic tests will indicate whether or not the effluent is acutely toxic. These arguments are not correct. Most of chronic assays are actually shorter term and more sensitive than the acute tests available for marine species. They all use the lethality endpoint from an organism in a chronic test. It is therefore unjustified to require both acute and chronic testing. Chronic testing covers the endpoint of concern and actually is a shorter-term test than the acute test in most cases (e.g., kelp, abalone, sea urchin, oyster, and mysid).

Response: There may be instances when both chronic and acute testing may be required. As there is potential for acute toxicity in this dilution range, it is left to the RWQCB's discretion as outlined in the 1997 Ocean Plan, Chapter VI B.

Comment 1.47: Tri-TAC/SCAP/CASA. Commenters recommend section C.3.c be modified to include criteria for determinations of the need for acute toxicity testing by RWQCBs in order to promote consistency across RWQCBs.

Response: See the response to comment 1.44(b).

Comment 1.48: Tri-TAC/SCAP/CASA. Commenters recommend that the acute toxicity provision be amended to allow site-specific determinations of acute mixing zones as described in method 4 on page 12 of the dFFED.

Response: Comment noted. This issue may be addressed at a subsequent triennial review.

Comment 1.49: Sempra Energy. Since the discharger would be required to comply with the limit regardless of the requirement to monitor for acute toxicity, the dFFED needs to address the ability of the dischargers with a dilution factor of less than 100:1 to comply with it and the cost for them to comply.

Response: Please refer to comment 1.42. Under Section III. C.3.c.(4), it is not anticipated that dischargers with initial dilutions below 100:1 will be required to monitor regularly for acute toxicity unless specifically requested to do so by a RWQCB.

Comment 1.50: Sempra Energy. The dFFED deleted the default 40:1 dilution factor for dischargers with dilution factors less than 100:1. As a result, the calculated acute toxicity limits for many facilities will be significantly less than the existing Table A toxicity limits.

Response: Unless required by a RWQCB, only chronic testing will be done for dischargers with dilution factors below 100:1.

Comment 1.51: Sempra Energy. The more restrictive of the current Table A limits were 7-day and 30-day averages which are less restrictive for compliance purposes than the new water quality-based limit which is presumably an instantaneous limit. The dFFED should address the impact of this change on the affected discharges.

Response: We believe that it is appropriate to replace the existing technology based Acute Toxicity Effluent Limitation (ATEL) with a water quality-based receiving water objective for acute toxicity. The

current Table A effluent limits, as mentioned above, were technology based, end of pipe limits, while the new Water Quality Objective is a daily maximum receiving water objective, designed to assess the acute toxicity impacts of discharges on ocean waters. The new objective adequately protects aquatic life, an assessment that is supported by the US EPA's TSD.

Comment 1.52: US EPA. "Technical Support Document for Water Quality-based Toxics Control" (EPA/505/2-90-001, March 1991). Using US EPA's recommended approach, the acute and chronic objectives are each applied at the edge of their respective mixing zones, and one discharge limit is calculated, using a statistical approach to determine which objective is the more limiting. In situations with low dilution, the more stringent discharge limit would be the one calculated from the chronic objective. This approach would ensure that a water quality-based limit is employed, regardless of dilution.

Response: As the commenter noted, "In situations with low dilution, the more stringent discharge limit would be the one calculated from the chronic objective." SWRCB believes that the water quality-based limit calculated from the chronic toxicity water quality objective will be used at low dilutions since it is specified in Section III(C)(3)(c) that at dilutions of 100:1 or less, chronic testing will be conducted.

Comment 1.53: Port of San Diego. The requirement to use younger life stage test organisms for determining acute toxicity appears to require the use of the same reporting parameters. Has there been any consideration on how these stricter permit conditions will impact dischargers, their customers, and/or the public?

Response: This requirement to use more sensitive test organisms is not a discretionary action by the SWRCB. Federal regulations (40 CFR 136) issued under the Clean Water Act (CWA) require use of US EPA approved test procedures for NPDES permit compliance monitoring. These regulations were amended in October 1995 to include biological testing methods. Since the acute toxicity test protocols listed on page 23 of the 1997 Ocean Plan are not listed as part of 40 CFR 136 under Table 1A—List of Approved Biological Methods, the SWRCB proposes to correct the Ocean Plan citation. The response to comment 1.2 elaborates on the use of more sensitive acute test protocols.

Additionally, the SWRCB does not believe that stricter permit conditions will occur. Unless acute testing is required by a RWQCB, it is not anticipated that ocean discharges with initial dilutions of 350:1 or less will be required to perform acute toxicity testing for permit compliance (see response to comment 1.39).

Comment 1.54: Heal the Bay: Commenter disagrees with the staff recommendations regarding selection of acute and chronic toxicity testing. Staff recommends that acute toxicity tests only be used when effluent is highly diluted (350:1 or higher) Most acute effects to human and marine life are seen when effluent is at low dilutions, yet the staff recommends only chronic tests at low dilutions. Not all chronic tests will indicate whether or not the effluent is acutely toxic. Commenter wants a requirement for both acute and chronic toxicity tests to protect human health and the health of marine life.

Response: It should be noted that the acute and chronic water quality objectives are for protection of marine aquatic life and are not based on human health protection. The results obtained from chronic testing detects toxicity at lower effluent concentrations than that from acute tests. The SWRCB supports the dilution factor approach recommended by the U.S. EPA in the Technical Support Document for Water Quality-based Toxics Control (TSD) (U.S. EPA, 1991) as the best approach in determining whether to use acute or chronic toxicity testing for a given ocean discharge.

The "chronic" test methods referenced in the Ocean Plan used to measure chronic toxicity are actually short term, critical life stage methods used to estimate chronic toxicity. These methods are based on

sublethal endpoints such as growth, reproduction, and abnormal embryo development. As such, the methods are more sensitive to toxic effects than the USEPA's acute methods based on an endpoint of mortality. The tests are also rapid; for example, the echinoderm fertilization test results can be interpreted after forty minutes. This contrasts with the typical 96 hour duration of the USEPA's acute test protocols.

If a RWQCB believes that acute toxicity testing should also be required of a discharge with a low dilution factor, the RWQCB has discretion under the Ocean Plan to require acute testing in addition to chronic testing.

Comment 1.55: Heal the Bay: Commenter believes that the staff recommendation for the establishment of an Acute Toxicity Water Quality Objective may not be protective of sensitive California marine species. Commenters are concerned that the objective may not be protective of California coastal species. Commenters want the SWRCB to provide the data and subsequent analysis that demonstrates that the new acute toxicity objective will be protective of all California coastal species. The commenter points to the complete lack of brittle stars off a POTW outfall in a Southern California coastal area where brittle stars should be the dominant species as an example of this problem.

Response: The SWRCB believes that the new acute toxicity objective will be protective of marine aquatic life in California's ocean waters. While the U.S. EPA study was not specific to California, it included many species and chemical toxicants. The U.S. EPA's 0.3 TU_a ambient water quality criterion has proven sufficiently robust under public scrutiny to become incorporated into the Great Lakes Guidance in 40 CFR Part 132, Appendix F, procedure 6.A.1. The EPA also states in the TSD that the selection of species for testing is not critical provided that the species are from ecologically diverse taxa. The acute tests on which the 0.3 TU_a water quality criterion was based did require this diversity.

There is evidence that the condition of benthic infauna near POTW ocean outfalls has improved in recent years, possibly because of improved wastewater treatment. While there are examples of changes in benthic assemblages due to discharges from outfalls, the relationship between brittlestar abundance and ocean outfalls has not been explained and may involve physical phenomena rather than toxicity. Data collected by Orange County Sanitation District (OCSD) and presented in their 1998 Ocean Monitoring Annual Report (http://www.ocsd.com/main.htm) indicate that over the past 13 years the abundance of brittle stars in the vicinity of the OCSD outfall has increased (recent decreases are thought to be the results of La Nina or previous El Nino effects). The 1998 report suggests that improved wastewater treatment systems have contributed to the return of brittle stars: "starting near the onset of the ocean monitoring program in 1985, a continuous repopulation has occurred for this species (brittle stars), correlated with reduced mass emissions of suspended solids, effective source control and decreased sediment contamination".

Comment 1.56: Heal the Bay: **Commenter** believes that exceedances of both acute and chronic toxicity objectives are violations of Ocean Plan requirements. Commenter suggest that the Board amend the Ocean Plan section III.C.9.a (Toxicity Reduction Requirements) to add the following sentence to subpart a. immediately following the first sentence: "Regardless of whether a TRE is required, however, any violation of a toxicity effluent limitation is a violation of the Ocean Plan."

Response: This comment is not applicable to the current amendments under consideration. It is the function of individual RWQCBs to determine if a TRE should be performed. However, this item was determined to be a high priority during the last Triennial Review and appears in the Triennial Review Workplan, July 15, 1999, as Issue C.4.d. The topic may be evaluated during a future triennial review to determine if this section of the Ocean Plan should be amended.

Issue 2: Revision of Water Quality Objectives for the Protection of Human Health in Table B

Comment 2.31: San Francisco Public Utilities Commission. We recommend the use of *action levels* in setting water quality objectives. Exceedance of the objective would initiate action but not necessarily result in non-compliance.

Response: SWRCB have previously responded to this comment; see response to comment 2.13. In summary, SWRCB believes that action levels would not comply with and are not authorized by the CWA or federal regulations. Water quality objectives are a required component of standards. Effluent limits, based on objectives, must be enforceable. The existing permitting process safeguards against imposing pollutant controls where none are needed, e.g., reasonable potential, dilution credits.

Comment 2.32: Tri-TAC & Sanitation Districts of Los Angeles County. We recommend that SWRCB defer adoption of the new and revised water quality objectives because the SWRCB still has not shown that there is a discharge or presence of these toxic chemicals in the affected waters that could reasonably be expected to interfere with designated uses, as required by the CWA 303 (c) (2) (B).

Response: Please refer to response to comment 2.2. Furthermore, the CWA section in question, CWA 303(c) (2) (B), indicates:

> *Whenever a State reviews water quality standards...such State shall adopt criteria for all toxic pollutants...for which criteria have been published under section 304 (a) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State...*

The above criterion does not require states to show that there is a presence of toxic pollutants before criteria are established. This would be akin to deferring the posting of a speed limit sign until a "suitable number" of automobile accidents have occurred. This section simply means that if the pollutant were discharged or present, it could reasonably be expected to interfere with designated uses. This interpretation of the statute is supported by the US EPA guidance documents discussed below. See also 55 Federal Register 14350 (April 17, 1990).

The 1994 US EPA Water Quality Standards Handbook (p.3-16) describes three scientifically and technically sound options for states to meet the requirements of CWA 303 (c) (2) (B). The first option is the one being employed by the State of California: "Adopt statewide numeric criteria in State water quality standards for all section 307(a) toxic pollutants for which EPA has developed criteria guidance, regardless of whether the pollutants are known to be present." These State options were also described in the National Toxics Rule, 57 FR 60853. As in the case of the National Toxics Rule, states that have inadequate water quality criteria will be subject to US EPA promulgation of federal water quality criteria under CWA 303 (c) (4) (B).

Comment 2.33: Tri-TAC & Los Angeles County Sanitation District. Commenters recommend that SWRCB defer adoption of the new and revised water quality objectives because SWRCB did not adequately consider the beneficial uses and environmental characteristics of individual hydrographic units as prescribed by Porter-Cologne for adopting water quality objectives.

Response: Please refer to the response to comment 2.28. The Ocean Plan is applicable to all ocean waters. There are no hydrographic units defined for California ocean waters.

Comment 2.34: Office of Environmental Health Hazard Assessment, Pesticide and Environmental Toxicology Section (OEHHA). In February 1999, OEHHA updated cancer potency factors (CPF) for three of the 12 chemicals (1,2-dichloroethane, heptachlor, heptachlor epoxide) being proposed for revised water quality objectives. We recommend that SWRCB use these updated potency factors. In addition, OEHHA has proposed a draft CPF for tetrachloroetheyene.

Response: The updated OEHHA CPFs were not available during the time that the dFFED was drafted, i.e., October 1998. The proposed water quality objectives are based on the best available information at the time of being drafted. SWRCB will reconsider these and other updated CPF during the next Ocean Plan Triennial Review.

Comment 2.35: OEHHA. The CPF listed in Table 4 of the dFFED for 1,2-dichloroethane applies to both inhalation and oral exposures. Therefore, the word "inhalation" in Table 4 should be deleted.

Response: The term "inhalation" has been deleted from Table 4.

Comment 2.36: OEHHA. Commenter supports the use of a 23 g/day California fish consumption rate.

Response: Comment noted.

Comment 2.37: OEHHA. Commenter supports the dFFED water quality objective calculations and recommends that SWRCB continue to follow changes in US EPA human health criteria methodology.

Response: Comment noted. SWRCB is committed to using US EPA criteria methodology when appropriate.

Comment 2.38: California Department of Toxic Substances Control, Human and Ecological Risk Division (DTSC). DTSC recommends the following Ocean Plan language change to Section II- E-3: The concentration of organic and inorganic materials in fish, shellfish*, or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health and ecological receptors.

Response: This suggestion does not directly relate to the Issues in the 2000 dFFED. The SWRCB may consider this in the next triennial review.

Comment 2.39: DTSC. Commenter recommends that the Ocean Plan (Appendix II) require initial monitoring with an aquatic plant, an invertebrate, and a fish, rather than being optional through the "if possible" language.

Response: Again, this suggestion should be deferred until the next triennial review.

Comment 2.40: DTSC. Commenter recommends that, when appropriate, biological indicators of exposure and effect be used to determine the impact of ocean discharges to the near-shore marine environment.

Response: This suggestion should be deferred until the next triennial review.

Comment 2.41: DTSC. Potency equivalency factors should be used in the calculation of the concentration of polycyclic aromatic hydrocarbons (PAH).

Response: This suggestion should be deferred until the next triennial review.

Comment 2.42: DTSC. New methods should be used to analyze for specific polychlorinated biphenyls rather that the Arochlor mixtures currently in the Ocean Plan.

Response: This suggestion should be deferred until the next triennial review.

Comment 2.43: DTSC. A more complete explanation is needed to explain why the seafood consumption rate of 23 g/day was not changed to reflect OEHHA's more recent in-depth evaluation.

Response: As stated in the dFFED (p.39), SWRCB determined that a 23 g/day seafood consumption rate is consistent with the median seafood consumption rate value provided by OEHHA in 1997 of 21 g/day. SWRCB staff met with OEHHA staff in 1998 to discuss the appropriateness of continuing to use a 23 g/day consumption rate. OEHHA staff agreed that continuing to use the 23 g/day seafood consumption rate was a practical solution (Memorandum from A. Fan, OEHHA to G. Bowes, SWRCB, "Upcoming amendments to California Ocean Plan related to consumption of fish and shellfish in California, November 24, 1998)." SWRCB believes that the existing dFFED explanation is adequate.

Comment 2.44: Tri-TAC. We have several comments about the economic analysis prepared for Issue 2 regarding the potential cost impacts of the proposed human health criteria. First, we continue to be concerned about the small sample used to estimate costs. Factors that distinguish dischargers, such as treatment processes, dilution credits, and the industrial discharge base to a Publicly Owned Treatment Works (POTW), were not considered. Also, although flow rates were used to stratify the sample, no information was provided about the overall division of the flow in the three categories for major dischargers.

Response: SWRCB has previously responded to this comment; see response to comment 2.17. Additionally, we believe that the sample provides a reasonable estimate of the potential compliance costs. It is unlikely that additional pollutant data would be available for minor dischargers; therefore, additional sampling is unlikely to change our conclusions for minor dischargers. For major dischargers, we found no instances of maximum effluent concentrations exceeding the proposed effluent limits (and, thus, no indication that compliance actions would be warranted) for the sample facilities. Additional sampling could increase our confidence that the majority of sites would have the same characteristics, but we believe that it also would not likely change our conclusions.

Contrary to the commenter's assertion, discharger treatment processes and dilution credits and other factors were considered in the economic analysis. Each facility analysis included a discussion of such factors as the existing treatment processes, existing source control, or pretreatment activities. Proposed effluent limitations were based, in part, on the actual dilution credits at the selected facilities.

Comment 2.45. Tri-TAC. A second concern is with the selection of measures to achieve compliance. Science Applications International Corporation (SAIC) (SAIC, Potential Costs Associated with Compliance with the California Ocean Plan, prepared for the SWRCB by SAIC, Reston, VA, December 1999, p. 6.) reports that no costs were assumed for reductions of less than 10 percent, and that a decision framework was followed for reductions above 25 percent. This description assumes that no costs would be incurred by any discharger until at least a 25 percent reduction was necessary. This is incorrect. We believe that the decision framework should be modified to indicate that dischargers would take action whenever the maximum concentrations were above the projected effluent limit. However, we recognize that, in some cases, more data gathering and/or studies would be the logical first step (as opposed to process changes or end-of-pipe treatment). This step should be added to the decision framework.

Response: As shown in Table 8 of the above-cited economic analysis, there are no cases where maximum concentrations exceed the projected effluent limits for the sample facilities. However, to provide a *very conservative estimate of potential costs* (i.e., err on the side of overstating costs), we considered the potential for noncompliance in all cases where the maximum concentration is a nondetect with a detection level that exceeds the projected effluent limit. In cases where the estimated reduction is less than 10 percent under the conservative assumptions used, we believe that the actual percent reductions required would be so small as to be of insignificant cost. Furthermore, the analysis includes a conservative estimate of monitoring costs. The cost of the data gathering suggested by the commenter as a rational first step, if any were required, would be included in these estimated monitoring costs. In cases where the estimated reduction is larger under the conservative assumptions used, we have included costs for both process optimization and pollutant minimization, which would include the costs of the logical first steps suggested by the commenter (e.g., data gathering, studies). Therefore, we disagree that the decision framework needs modifying.

Comment 2.46. Tri-TAC. Third, the analysis assumes that process optimization would be a reasonable means of compliance for thallium exceedances, as would pollutant minimization. The analysis also appears to assume (SAIC report p. 9-16) that pollutant minimization would be able to produce reductions of at least 25 percent for pesticides such as heptachlor and its metabolite, heptachlor epoxide (most uses of which were banned in 1978). Please explain the basis for these assumptions and specific examples where POTWs have achieved reductions of the same magnitude for the same pollutant using these methods. Without a quantitative analysis of the reductions possible through process optimization and pollutant minimization for each compound based on actual experience by a similar type of discharger (e.g., POTW, same industrial class, etc.), we believe the validity of these assumptions is very questionable.

Response: Again, as shown in Table 8 of the above-cited economic analysis, there are no cases where maximum concentrations exceed the projected effluent limits for the sample facilities. However, to provide a conservative (i.e., err on the side of overstating costs) estimate of costs, we considered the potential for noncompliance in all cases where the maximum concentration is a nondetect with a detection level that exceeds the projected effluent limit. Thus, the assumption in the analysis that facilities would need to achieve reductions for thallium, heptachlor, and heptachlor epoxide is, in itself, conservative. There is no information on the actual, quantitative percent reductions that might be required.

While precise quantitation of the actual reductions (if any) that might be required is not possible, we believe that the methods (process optimization, pollutant minimization) assumed to be applicable thallium, heptachlor, and heptachlor epoxide in the analysis can effectively produce reductions for these pollutants. There is no domestic production of thallium in the United States. The primary uses of thallium are in the electronics, metal alloy, and glass industries. Trace amounts of thallium also are associated with releases from mining operations, such as copper mining and petroleum refining. Given the limited number of potential sources of thallium, it is fair to assume that pollutant minimization would be an effective means of reducing thallium inputs and therefore releases, should any be required.

A similar case can be established for heptachlor and heptachlor epoxide. Although the use of heptachlor has been reduced drastically since 1978, it still has its limited use in the control of fire ants in buried pad-mounted electric power transformers and underground cable television and telephone cable boxes. Other sources of heptachlor include coal mining, foundries and metal manufacturing. Given these limited sources, pollutant minimization would be an effective means of achieving heptachlor reductions. Furthermore, the best available technology for the removal of heptachlor from wastewater is Granular Activated Carbon (GAC). GAC can be sensitive to operation and maintenance practices. Therefore, it is fair to assume that in many cases, process optimization would also be a potential means for reducing heptachlor releases, should any be required.

Issue 3: Compliance Determination for Chemical Objectives

Comment 3.50: SFPUC. We continue to be concerned that Pollutant Minimization Programs (PMPs) will be mandated for "legacy" pollutants. Sources of these pollutants are reservoirs in receiving waters and sediment. It is difficult or impossible for POTWs to address some pollutants, e.g., dioxins, PCBs. We suggest that SWRCB take the lead by using water quality bond monies to address the cross-media approach needed for "legacy" pollutants. It is inappropriate for SWRCB to continue to place POTWs in the position of being primarily responsible for these "cross-media" pollutants.

Response: Please refer to response to comment 3.43. PMPs will be determined based on each discharger's unique compliance situation. Although the SWRCB encourages a watershed approach to solving water quality problems, especially for persistent organic pollutants, each individual NPDES permittee is responsible for conducting a PMP when required by the RWQCB. The SWRCB does not expect that ubiquitous pollutants will trigger a PMP under the evidence requirements contained in the Ocean Plan.

In addition, water quality laws require appropriate limitations based, in part, on the state of the receiving water. The availability of bond monies or other public funds that should be used for cleanup is a separate issue that would be appropriate in a Total Maximum Daily Load (TMDL) implementation plan.

Comment 3.51: Tri-TAC and Sanitation Districts of Los Angeles County. We support establishing statewide Minimum Levels (MLs) but recommend postponement of the issue because of concerns regarding selection and attainability of some specific MLs.

Response: The procedures added by Issue 3 would provide a uniform way to assess compliance with permit effluent limitations. Without these procedures, the existing Ocean Plan only addresses *when* compliance determinations should be made, not *how* to make compliance determinations. These procedures, if adopted, will be nearly identical to language previously approved by the SWRCB in the State Inland Surface Waters/ Enclosed Bays and Estuaries Policy. For these reasons, SWRCB believes that adoption of Issue 3 should not be postponed.

Comment 3.52: Tri-TAC and Sanitation Districts of Los Angeles County. We recommend specific Ocean Plan language saying that MLs will not be modified or added to except pursuant to California Water Code (CWC) 13241.

Response: As action occurs, there will be a determination of required compliance with laws. SWRCB expects that establishing statewide MLs will be an iterative process, since laboratories will constantly be improving their detection capabilities. The MLs proposed represent the SWRCB's best estimate of achievable MLs based on actual laboratory surveys. The Ocean Plan is automatically subject to review every three years; the explicit language proposed is not necessary.

Comment 3.53: Tri-TAC and Sanitation Districts of Los Angeles County. Procedures for deviating from the list of MLs do not meet the Administrative Procedures Act (APA). Specifically, SWRCB failed to describe the impact of MLs that would be established by the RWQCBs. We recommend new language or that the RWQCB-established MLs be subject to discharger approval.

Response: It is legal to allow exceptions for RWQCBs. It is appropriate to have a general rule, with allowance for exceptions. Nothing in the APA prohibits this. Should a RWQCB adopt different MLs, they would follow required procedures at that point.

Comment 3.54: Tri-TAC and Sanitation Districts of Los Angeles County. Procedures for establishing matrix-specific MLs are too burdensome. They recommend using 3.18 x matrix-specific Method Detection Limit (MDL).

Response: SWRCB have previously responded to this comment; see response to comment 3.14. In brief, the use of an "interim" ML = 3.18*MDL remains controversial, and US EPA has not produced a *final* guidance recommending this procedure. In addition, SWRCB believes that the compliance procedures are not too burdensome and provide an essential procedure to adjust MLs to discharger-specific matrices.

Comment 3.55: Tri-TAC and Sanitation Districts of Los Angeles County. We have concerns regarding implementation provisions of PMPs. We recommend that the PMP evidence requirement be revised to read: "There is specific evidence showing that the pollutant is present in the effluent above the calculated effluent limitation." Reason—to remove the PMP trigger for ubiquitous pollutants.

Response: SWRCB believes that the proposed change would not change the intent of the existing PMP language and is not necessary.

Comment 3.56: Tri-TAC and Sanitation Districts of Los Angeles County. We recommend adding the phrase "technical feasibility" to the existing cost effectiveness considerations that the RWQCB may consider when determining the need for a PMP.

Response: SWRCB believes that the proposed change would not change the intent of the existing PMP language and is not necessary.

Comment 3.57: Tri-TAC and Sanitation Districts of Los Angeles County. We desire a tangible PMP "offramp" language and recommend that the following be added to the PMP language: "RWQCB shall have the discretion to determine when a PMP is no longer necessary."

Response: SWRCB believes that that the proposed change would not change the intent of the existing PMP language and is not necessary.

Comment 3.58: Sempra Energy. We recommend that the approval of the proposed MLs be postponed until such time that the problems associated with their development are resolved.

Response: See response to similar comment 3.51.

Comment 3.59: Sempra Energy. The selection of the lowest calibration standard as a gauge of quantitation is inappropriate because (1) the lowest calibration point arbitrarily selected by the laboratory is more closely related with the MDL than a quantitation level, and (2) it could set the quantitation level at a concentration at which there is still unacceptable variability.

Response: SWRCB has previously responded to this comment; see response to comment 3.8. In brief, regardless of how the MLs are derived it is important to remember that MLs will not replace a discharger's ultimate responsibility to comply with their calculated effluent limitation. SWRCB believes that that the compliance procedures and the associated MLs are appropriate and defensible.

Comment 3.60: Sempra Energy. Unless all of the laboratories that provided data to the SWRCB for their derivation of MLs used the same methodology to validate their lowest calibration points, the calibration points from the different labs are not comparable. If the values are not comparable, they should not be combined for the purpose of deriving MLs as this would result in invalid numbers that could contain unacceptable levels of variability.

Response: SWRCB has previously responded to this comment; see response to comment 3.8. In addition, the proposed MLs were appropriately derived for each pollutant after grouping the data into similar analytical techniques. This methodology is an appropriate way to establish a single statewide ML using actual California laboratory analytical practices.

Comment 3.61: Sempra Energy. It is unclear how a single discharger could economically develop a matrix specific ML for their discharge.

Response: Under the proposed language, dischargers may propose a matrix-specific ML to the RWQCB rather than using the statewide ML in Appendix II. The language also provides some guidance on sample preparation procedures when matrix effects are present. The details of how a matrix-specific ML would be developed are the responsibility of the discharger and must be approved by the RWQCB.

Comment 3.62: Sempra Energy. It is unclear what the timing will be for including the proposed MLs into permits. The Ocean Plan should be revised to provide dischargers the time to develop MLs that are relevant to their discharge matrix and to obtain revision of their permit to incorporate the matrix-specific MLs.

Response: The proposed compliance determination language is part of the Ocean Plan Program of Implementation. As such, the ML provisions will be incorporated into new or re-issued permits. Under normal circumstances, existing permits will remain in effect and will not be re-opened to incorporate MLs. This is implicit in the Ocean Plan language.

Comment 3.63: Sempra Energy. It is not clear if this language [section III. 4b] would preclude a discharger from using a matrix-specific ML that is higher than the Minimum Level* listed in Appendix II.

Response: Section III 4b pertains to any deviations from the statewide MLs in Appendix II. Some of these deviations will be to use MLs that are *lower* than those in Appendix II. In contrast, we expect that dischargers demonstrating matrix interferences will propose matrix-specific MLs that are *higher* than those in Appendix II. The existing language is appropriate because it allows dischargers to propose a matrix-specific ML when their "calibration standard matrix is *sufficiently different* from that used to establish the Minimum Level in Appendix II."

Comment 3.64: Sempra Energy. Sempra Energy's comments on the dFFED asserted that the SWRCB lacks the authority to require PMPs as described in the dFFED. The proposed PMP language goes beyond monitoring and reporting and requires development of control strategies and implementation of control strategies.

Response: Please refer to the response to comment 3.32. The SWRCB has the authority (CWC § 13160, 13370, 13263) to require the development and implementation of control strategies when evidence suggests that a permittee is discharging a pollutant at concentrations greater than the effluent limitation.

Comment 3.65: Sempra Energy. Several of the proposed examples of "evidence" that a pollutant is present in a discharger's effluent at levels above the calculated effluent limitation [Section III 8c] are too non-specific to a discharge and should be deleted.

Response: Please refer to the response to comments 3.42 and 3.54. The existing Ocean Plan examples of evidence language are adequate to allow the RWQCBs with enough justification to require PMPs.

Comment 3.66: Heal the Bay. The proposed Ocean Plan's utilization of Minimum Levels fails to provide for compliance with water quality standards. By authorizing the minimum level to supplant the water quality-based effluent limitation in the permit, the proposed revision to the Ocean Plan effectively authorizes effluent limitations that are not derived from, and do not comply with, water quality standards.

Response: Please refer to response to comment 3.16. Furthermore, the proposed language does not alter the Ocean Plan procedures for establishing water quality-based effluent limitations from water quality standards. The Ocean Plan's Implementation Procedures for Table B (Sec. III C) require that effluent limitations are imposed such that water quality objectives are not exceeded upon completion of initial dilution.

Contrary to the commenter's assertions, Minimum Levels will not "supplant" or supercede water quality-based effluent limitations, nor will the proposed language "authorize" effluent limitations that are not derived from water quality standards. The proposed Minimum Level procedures will be used for assessing compliance with water quality-based effluent limitations in the difficult situations where the concentration of the limitation is below the 40 CFR 136-approved analytical detection level.

USEPA guidance (1991 USEPA Technical Support Document for Water Quality-based Toxics Control, p.111-112) in these situations is to include the numeric water quality-based effluent limitation in the permit along with a requirement indicating the specific analytical method that should be used for purposes of compliance monitoring. The guidance further recommends that any sample analyzed in accordance with the specified method and found to be below the compliance level will be deemed in compliance with the permit limitation. For most NPDES permitting situations, USEPA recommends that the compliance level be defined as the Minimum Level (ML). The Minimum Level was also incorporated into Procedure 8 of the Water Quality Guidance for the Great Lakes (60 FR 15424). Also consistent with USEPA guidance for permits having effluent limitations below detection levels, the Ocean Plan procedures require that special conditions (Pollutant Minimization Program) be placed in permits to help ensure that limitations are being met. Therefore, the Ocean Plan procedures for compliance determination through the use of Minimum Levels adhere to USEPA guidance. Because the use of Minimum Levels is endorsed in USEPA guidance, it is consistent with the Clean Water Act.

Comment 3.67: Heal the Bay. The proposed Ocean Plan illegally authorizes "Minimum Level"-Based Effluent Limits in lieu of Water Quality-Based Effluent Limits. By authorizing the inclusion of a minimum level in the discharge permit, the Plan effectively authorizes "minimum level-based effluent limitations" that supplant and inflate the water quality-based effluent limitation. There is no authority in the Clean Water Act for a minimum level-based effluent limitation; rather, only technology-based and water quality-based effluent limitations are authorized and mandated. *See* 33 U.S.C. § 1311(b)(1)(C). The State Board has no authority to *authorize the issuance of permits* that do not achieve water quality standards.

Response: Please refer to response to comment 3. 66, above. The Ocean Plan requires the proper use of water quality-based effluent limitations. As explained in 3.66, the use of Minimum Levels to determine compliance with effluent limitations is appropriate under the Clean Water Act as interpreted by USEPA.

Comment 3.68: Heal the Bay. The proposed minimum level provisions authorize exemptions from Water Quality-Based Effluent Limits. The proposed Ocean Plan's minimum level provision effectively authorizes exemptions, lasting the duration of the permit, from compliance with water quality-based effluent limitations. The proposed revisions will allow a discharger to implement a pollutant minimization program if the effluent limitation is below the minimum level and there is evidence the limit is being exceeded *as an alternative to compliance of established limitations*. There is no authority for an alternative to compliance with water quality-based effluent limitations. Rather, the Clean Water Act requires achievement of water quality-based effluent limitations. 33 U.S.C. § 1311(b)(1)(C). The only

legal authority for exemptions from water quality standards is an EPA regulation that allows states to adopt, as part of their water quality standards, provisions for *variances* from water quality standards. *See* 40 C.F.R. § 131.13. Variances, however, are time-limited and subject to detailed requirements. *See* above, section IV.A. The proposed minimum levels provisions do not meet the regulatory requirements for variances, and they are therefore without basis in the Clean Water Act or Porter-Cologne Act.

Response: The Ocean Plan Minimum Level provision does not authorize exemptions or variances from water quality-based effluent limits. As explained in the Responses to comments 3.66 and 3.76, the Minimum Levels are used to determine compliance with water quality-based effluent limitations. The Minimum Levels listed in Appendix III represent the current analytical abilities of California-certified laboratories. The SWRCB is confident that reasonable assessments of compliance *cannot* be made by regulators below these Minimum Levels. In contrast, dischargers will be deemed out of compliance if the sample concentration is greater than the effluent limitation and the sample concentration is within the range of California analytical laboratory abilities for detection (i.e., equal to or above the Minimum Level). The discharger requirement to conduct a Pollutant Minimization Program is not an "alternative to compliance," it is a result of uncertainty in regard to compliance. Pollutant Minimization Programs are required when the results of the usual analytical chemistry methods (40 CFR 136) do not provide definitive conclusions of compliance or non-compliance with numeric effluent limitations, yet other forms of evidence show that the pollutant is present above the effluent limitation. Although the Ocean Plan procedures allow for the use of more sensitive methods, some effluent limitations are beyond the lower range of any approved analytical method.

Comment 3.69: Heal the Bay. The proposed Ocean Plan fails to provide an effective solution to the problem of applying the minimum level provisions to pollutants regulated as chemical groups. Specifically, for pollutants regulated as chemical groups, State Board staff proposes to allow all DNQ results to be substituted with a zero for noncompliance determinations. Yet, as staff recognizes, "this will result in 'all or nothing' determinations of compliance, and therefore, are not amenable to the pollutant minimization program provisions . . . ." Sept. 1, 2000 Draft FED at 82. Thus, for pollutants regulated as part of a chemical group, water quality is even more likely to suffer as the discharger will not be required to conduct a pollutant minimization program. Staff's proffered solution of putting off any long-term effort to solve this problem to a "later Triennial Review" is completely unacceptable from the perspective of protecting water quality.

Response: The dFFED (p.82) contains a discussion of the technical problems associated with regulating closely-related chemical groups using a single water quality objective for the chemical group. Also see the response to comment 3.27. Contrary to the commenter's assertion, water quality will not suffer from the proposed language because the water quality objective for a chemical group is intended to be applied to the summation of each chemical in the chemical group. According to the Ocean Plan language, dischargers are deemed out of compliance with an effluent limitation that applies to the sum of the individual pollutant concentrations if the sum is greater than the effluent limitation. The proposed language provides a reasonable approach to obtaining a numeric sum if one or more chemical concentrations are lower than the abilities of California analytical laboratories (i.e., less than the Minimum Level).

The commenter did not propose any different suggestions or solutions the problem of regulating chemical groups. The SWRCB did consider other approaches including applying the group-based objective directly or proportionally to each chemical in the group, summing the individual Minimum Levels to create a summation-based Minimum Level, substituting the method detection limit for "detected, but not quantified" results. The resulting Ocean Plan language represents the approach suggested by USEPA Region IX, to use zero for "nondetects" and "detected, but not quantified" sampling results. Using this approach, the sum of concentrations will be zero until at least one individual sample exceeds the

Minimum Level. Once this occurs there is an acceptable degree of certainty in the summation value for the purposes of determining compliance.

The SWRCB still believe that the long-term solution to this problem is to regulate each pollutant individually. However, the compliance determination procedures for effluent limits expressed as a sum of several chemicals is adequate for protecting water quality. The Ocean Plan as amended will result in the issuance of permits that are protective of water quality standards. The commenter cited a case that could not be found and is therefore not responded to. In any event the use of Minimum Levels does not modify the terms of permits.

Comment 3.70. Heal the Bay**.** Some of the MLs listed in the proposed Ocean Plan are not the most sensitive minimum levels available. For instance, the Direct Current Plasma (DCP) method for measuring metals should no longer be allowed. It simply doesn't make sense to use this method with its extremely high MLs when all of the other analytical methods for metals (Inductively Coupled Plasma, Flame Atomic Absorption, etc.) have MLs up to two orders of magnitude lower. We therefore urge the Board to delete this method as an allowable analytical method for measuring metals from the Ocean Plan. As another example, the EPA has approved a new analytical method for mercury which has a minimum level of 0.0005 micrograms (0.5 nanograms) per liter. *See* 63 Fed. Reg. 28868, 28881 (May 26, 1998), to be codified at 40 C.F.R. pt. 136. This is three orders of magnitude more sensitive than the Ocean Plan's lowest minimum level of 0.20 micrograms per liter.

Response: Please refer to the response to comment 3.17. Furthermore, the Minimum Levels proposed in Appendix II represent a cross-section of the analytical techniques currently employed by California certified chemistry laboratories. Each Minimum Level is specific to a pollutant and the analytical method used to measure the concentration of that pollutant. The proposed Ocean Plan language allows dischagers the option to use any of the Minimum Levels (and their associated analytical techniques) when the effluent limitation is greater than the Minimum Levels. This would be an appropriate permitting situation to use one of the analytical techniques having higher detection limits, such as direct current plasma. Thus, it would not be appropriate to delete Minimum Levels for analytical methods having higher detection limits. In permitting situations where all the Minimum Levels are greater than the effluent limitation, dischargers must use the most sensitive Minimum Level in Appendix II. Additionally, dischargers have the option of using analytical methods that are more sensitive than the methods included in the SWRCB laboratory survey listed in Appendix II, such as the mercury method mentioned above.

Issue 4: Change in Format of the California Ocean Plan

Comment 4.5. San Francisco Public Utilities District. In our original comments, we requested that this implementation plan contain a reference to US EPA's 1994 *Combined Sewer Overflow Control Policy* (59 FR 18688). This policy establishes a consistent national approach for controlling discharges from Combined Sewer Overflows (CSOs) through the NPDES permit program. We made this request because, otherwise, the Ocean Plan has no appropriate mechanism for addressing the discharges from San Francisco's combined sewer system. San Francisco has the only coastal combined sewer system in California.

Response: The SWRCB has reevaluated the discharger's concern (previously addressed in comment 4.2 of the September 1, 2000 dFFED) and proposes that the amendment be changed to include the CSO policy. The proposed amendment includes the following language (Chapter III Program of Implementation): "discharges from the City of San Francisco's combined sewer system are subject to the EPA's Combined Sewer Overflow Policy." This change does not introduce any significant environmental or economic impacts beyond those evaluated in the dFFED already, and, as the commenter noted, removes a potential inconsistency with an existing water quality control plan

Issue 5: Special Protection For Water Quality and Designated Uses in the Ocean Waters of California

Comment 5.23: WSPA, Goleta Sanitation District, Tri-TAC/CASA/SCAP, California Manufacturers & Technology Association et.al. Request that Issue 5 be withdrawn from the proposed amendments. We do not believe there is an environmental or regulatory need for increased use of special status designations. The proposed amendments do not consider how the designations would interact with other federal and State programs such as TMDL. The policy changes recommended by staff will only result in additional layers of duplicative requirements and will not serve any purpose towards increasing protection of water quality area. This contention is supported by Governor Davis' recent veto of SB 1834.

Response: Opposition to SWRCB consideration of Issue 5 is noted. Inclusion of the proposed procedures in the Ocean Plan will increase public access to and awareness of the nomination process. The SWRCB and RWQCBs retain sole authority to make the designations. Outstanding National Resource Water (ONRW) and Outstanding State Resource Water (OSRW) are recognized by federal antidegradation policy as "Tier 3" and "Tier 2½" levels of protection, respectively. Each of these designations provides a specific level of protection that is currently unavailable to the SWRCB through the existing Areas of Special Biological Significance (ASBS) designation. A veto of a bill does not have any meaning as to legislative intent. The fact that the bill previously contained sections regarding ONRW and OSRW, which were later removed, does not indicate any legislative intent. The authority of the SWRCB and RWQCBs to prohibit or limit discharge of waste to certain water is unrelated to the issue of development of TMDL.

Comment 5.24: California Coastal Commission. The California Coastal Commission supports adoption of the proposed changes related to ASBS, ONRW, and OSRW.

Response: Comment noted.

Comment 5.25: South San Luis Obispo Community Service District (SSLO CSD). The SWRCB should take whatever additional time is necessary to develop a more comprehensive proposal for the designation of special ocean protection areas. Designation of protected areas near Pismo Beach could drastically alter the District's ability to function in the absence of major changes, both in treatment and/or disposal.

Response: Opposition to the adoption of Issue 5 is noted. It is impossible for the SWRCB to predict where or when any nomination(s) for new protected areas may occur. The proposed procedures require that the potential consequences of individual designations, including impacts to existing and future discharges, be considered during evaluation of individual nominations. Please refer to response 5.22 in the dFFED.

Comment 5.26: County of Orange, Public Facilities and Resources Department. Commenter agrees that listing the existing ASBS' in the Ocean Plan is a good idea. However, we believe the criteria for ASBS is overly broad. We disagree with staff's response to comment 5.1 in the dFFED. Without specific measurable and identifiable requirements, it cannot be assured that only exceptionally valuable waters will obtain ASBS designation. ASBS listing should be based on verifiable and supportable scientific findings. Candidate areas should contain rare or endangered species that could be adversely impacted by current discharges; areas that are one-of-a kind and unique to California.

Response: The criteria for ASBS are unchanged from those implemented by the SWRCB in 1974. The proposed amendments do not alter the criteria for designation as an ASBS. Disagreement with the qualitative nature of the ASBS criteria is noted. The presence of a single, or even several, of the

evaluation criteria does not guarantee that any location would be designated as an ASBS. The decision is inherently a discretionary determination that must be approved by the SWRCB.

Comment 5.27: County of Orange, Public Facilities and Resources Department. We note the apparent conflict between the 1997 Ocean Plan and the November 1999 SWRCB pamphlet identifying ASBS areas. The Ocean Plan stipulates no discharge into or near ASBS. The pamphlet allows discharge of storm water and nonpoint runoff as long as they are controlled to the extent practical.

Response: The proposed amendments do not alter the prohibition of discharge in the Ocean Plan. Interpretation of the prohibition is not being considered now, but may be considered in the future.

Comment 5.28: Alliance to Rescue Crystal Cove, Brown, Davik, Falzetti, Gartland, Larson, Pineda, Stouffer, Merrilees. I have been monitoring and documenting urban runoff into the Crystal Cove ASBS. This runoff is illegal. I support Issue 5. Please do not pull Issue 5 from the proposed Ocean Plan amendments.

Response: Issue 5 is being considered by the SWRCB at the November 16, 2000 meeting.

Comment 5.29: SFPUC. The proposed procedures for designating protected waters will potentially preclude future improvements to water quality. San Francisco has multiple discharge locations. The proposed amendments would not permit relocating existing discharges even if an overall environmental benefit was being achieved. The restrictions imposed by the definition of existing discharge effectively become a growth limitation.

Response: The concern that future designation of protected areas could constrain discharges, impacting San Francisco's ability to accommodate growth is noted. The proposed amendments do not introduce any new restriction of waste discharge. The existing Ocean Plan prohibits the discharge of waste into or near ASBS. The level of protection provided by ONRW and OSRW is regulated by antidegradation policy. The provisions for ONRW and OSRW clarify the process for nomination and designation of ONRW and OSRW, but do not change the level of protection. The impacts of creation of any new ASBS, ONRW, or OSRW would be considered at the time of designation.

Comment 5.30: SFPUC, Tri-TAC/CASA/SCAP. The proposed amendments include revised language that prohibits the discharge of waste to ASBS except as provided in Chapter III.E. This appears to preclude the discharge of storm water or streams containing storm water. If the intent is that all storm water be captured and re-routed around ASBS, then this issue and the associated costs need to be explicitly addressed by the dFFED.

Response: The prohibition of the discharge of waste into or near an ASBS is already in the Ocean Plan. The proposed amendments being considered at this time only modify the existing prohibition to allow some limited-term activities. There is no revision in the application of the existing prohibition to storm water discharges. This issue may be considered in the future.

Comment 5.31: SFPUC. A more precise definition of "sufficient distance" is needed. Also, the term "natural water quality conditions" should be numerically defined.

Response: The terms "sufficient distance" and "natural water quality conditions" are from adopted text already in the Ocean Plan. These terms are not new or altered by the proposed amendments currently under consideration by the SWRCB. In response to this comment, definition of these terms will be considered in the triennial review as a possible amendment to the Ocean Plan.

Comment 5.32: US EPA Region 9. The proposal to allow temporary and short-term changes in water quality within an ASBS has the potential to result in permanent degradation. The US EPA would like to see how the SWRCB plans to implement this exception.

Response: The intent of this exception is to accommodate necessary short-term activities such as road or bridge repairs. The language limits such activities to those that may result in temporary and short-term changes. Activities that would result in permanent degradation would not be permitted.

Comment 5.33: Pool Supply Orange County (PSOC). The beach where I grew up has been ruined by runoff from development. We need to provide rules for future development and older established places to maintain the water quality of the 1950-60, not the water quality of today.

Response: Support for establishment of regulations to protect and restore water quality is noted.

Comment 5.34: Center for Marine Conservation, et.al. The proposed language in general provides a sound and comprehensive description of the procedures under existing law for nominating, reviewing the nomination of, approving, and implementing special status designations for unique ocean waters. While we have concerns regarding some of the provisions in the amendments, such as the allowance of short-term fluctuations in ASBS water quality, there is no reason to delay the SWRCB's consideration of Issue 5.

Response: Support for consideration of Issue 5 is noted.

Comment 5.35: Center for Marine Conservation, et.al. On page B-3 of the dFFED, "Chap III.H" should be corrected to "Chap III.J".

Response: This correction on page B3 has been made as shown below.

> b. To the extent there is a conflict between a provision of this plan and a provision of another statewide plan or policy, or a regional water quality control plan (basin plan), the more stringent provision shall apply except where pursuant to Chap III.J of this Plan, the SWRCB has approved an exception to the Plan requirements.

Comment 5.36: Center for Marine Conservation, et.al. On page B-13, "PSRNSW*" should be corrected to "OSRW*".

Response: This correction has been made as shown below.

> 4. Outstanding* National Resource Waters (ONRW*) and Outstanding State Resource Waters (OS~~NS~~RW*)

Comment 5.37: Center for Marine Conservation, et.al. The procedures describing the contents of a petition to alter an OSRW, page B-24, should be corrected to match those in Appendix V.

Response: This correction has been made. The new language is the same as that in Appendix V as presented below.

> 5. Any person may file a petition with the State Board or a Regional Board to modify the boundary or lower the water quality of a designated OSRW*, or to have the designation removed. The petition shall include:

~~a. The specific boundary change that would be modified or the specific water quality parameters that would be lowered;~~

~~b. A description of any proposed activity which could take place if the petition is granted, including a list of the other approvals needed and an estimate of the time required for the approvals;~~

~~c. An analysis demonstrating that the requested change is consistent with all applicable water quality standards, including state and federal antidegradation requirements.~~

(a) The specific change requested;

(b) A justification for the proposed change, including a description of any proposed activity that could take place if the petition is granted. The description shall include a list of the other approvals needed and an estimate of the time required for the approvals.

(c) An analysis demonstrating that the requested change is consistent with all applicable water quality standards, including state and federal antidegradation requirements.

(d) Data and information to indicate whether the proposed change may have a significant effect on the environment. If the data or information indicate that the proposed change will have a significant effect on the environment, the petitioner must submit sufficient information and data to identify feasible changes in the proposal that will mitigate or avoid the significant environmental effects.

2. Upon a determination that a petition is complete, in accordance with 1. above, the SWRCB or RWQCB, as appropriate, shall process the petition in accordance with the procedures for nomination of an OSRW contained in this Appendix.

Comment 5.38: Center for Marine Conservation, et.al. The definition of "Existing Discharge" presented in Appendix B, page B-29, is not consistent with that in Issue 5, page 133, of the dFFED. Recommend that the definition in Appendix B be revised accordingly to reflect the new information presented in Issue 5. The definition of "Existing Water Quality" in Issue 5 should be added to Appendix B.

Response: The definitions of "Existing Discharge" and "Existing Water Quality" in Appendix B have been corrected to read as follows:

EXISTING DISCHARGE: A waste discharge to ocean waters that is occurring or is permitted on the date of designation of an ONRW or OSRW. Changes in the permitted (1) design of the waste discharge facility, (2) volume of the discharge or (3) treatment of the waste will be considered an existing waste discharge to the extent authorized under waste discharge requirements in effect on the date of the designation.

EXISTING WATER QUALITY: As related to the designation of ONRW and OSRW means, at a minimum, the best water quality actually obtained in the water body on or after November 28, 1975.

Comment 5.39: Center for Marine Conservation, et.al. The following definition of "increased discharge" is a slightly edited version of that in Appendix B. We recommend that this definition be used in Appendix B, page B-30.

Response: There are no special provisions or regulations for "increased discharge," and consequently an entry is not required in the Definition of Terms appendix of the Ocean Plan. The proposed definition of NEW*DISCHARGE (refer to 5.40 below) is any discharge that is not an EXISTING* DISCHARGE. The definition of an EXISTING* DISCHARGE (refer to 5.38 above) includes specific criteria. If the volume of an EXISTING* DISCHARGE increases beyond that allowed by the criteria, the discharge becomes a NEW* DISCHARGE.

Comment 5.40: Center for Marine Conservation, et.al. The definition of "New Discharge" in Appendix B, page B-31, is inconsistent with the language in Issue 5. We recommend modification of the definition of "New Discharge" making it consistent with Issue 5.

Response: The revised definition of NEW* DISCHARGE is presented below.

NEW* DISCHARGE: Any discharge that is not an existing discharge.

Comment 5.41: Center for Marine Conservation, et.al. Recommend minor editing of text in the proposed Procedures for the Nomination and Designation of ASBS on page B-42. The suggested revision will make this section consistent with Appendix V.

Response: The suggested changes have been made as follows:

3. A RWQCB may decide to (a) consider individual ASBS nominations upon receipt, (b) consider several nominations in a consolidated proceeding, or (c) consider nominations in the triennial review of its water quality control plan (basin plan). ~~In no event shall~~ A nomination that meets the requirements of 1. above may be considered at any time, but not later than the next scheduled triennial review of the appropriate Basin Plan or Ocean Plan.

4. After determining that a nomination meets the requirements of paragraph 1. above, the executive officer of the affected RWQCB shall prepare a Draft Nomination Report containing the following: ….

Comment 5.42: Center for Marine Conservation, et.al. On pages B-43 and B-45, we recommend adding "draft" and "final" to the title of the Preliminary Report. This change would distinguish between the Preliminary Report that exists prior to review by other agencies, and the Preliminary Report that would exist after comments from other agencies have been considered.

Response: The SWRCB recognizes the value of distinguishing between the version of the "preliminary report" that exists prior to review by other agencies and the final version that would exist after comments from other agencies have been considered. Accordingly, the proposed addition of "draft" and "final" to the title is incorporated as requested. During consideration of this comment, it was noted that the name "Preliminary Report" is potentially misleading in that "Preliminary" may be construed as a report that is yet to be completed. Having a "Draft Preliminary Report" and a "Final Preliminary Report" only adds to the potential confusion. Consequently, the proposed revisions include naming the document as a "Nomination Report." The full titles shall be "Draft Nomination Report" and the "Final Nomination Report."

6. (a) If the Final Nomination Report recommends approval of the proposed designation, the Executive Officer shall ensure that processing of the nomination complies with the CEQA consultation requirements in Section 3778, Title 23, California Code of Regulations and proceed to step 7 below.

(b) If the Final Nomination Report recommends against approval of the proposed designation, the Executive Officer shall notify interested parties of the decision. No further action need be taken. The nominating party may seek reconsideration of the decision by the RWQCB itself.

Comment 5.43: Center for Marine Conservation, et.al. Page B-43. We recommend that the nomination process for ASBS by the SWRCB be revised consistent with the process proposed for nomination of ONRW and OSRW by the SWRCB.

Response: The ASBS nomination process is designed to ensure local input through the RWQCB. The proposed ONRW and OSRW designations may be more appropriately addressed at the state level. Accordingly, the procedures require that ASBS nominations be considered at the RWQCB level. However, SWRCB may nominate and adopt ONRW or OSRW without RWQCB participation. Given the more stringent rules that apply to ASBS, the inclusion of local review is appropriate.

Comment 5.44: Center for Marine Conservation, et.al. On page B-43, procedure 11 should use "waste" to be consistent with "Discharge Prohibitions" and definition sections. On page B-44, we recommend revision of the wording in the nomination procedures to eliminate "received by the SWRCB or a RWQCB." This is appropriate as the respective Boards may make their own nominations.

Response: The suggested changes have been made as follows:

11. The SWRCB Executive ~~officer~~ Director shall advise other agencies to whom the list of designated areas is to be provided that the basis for an ASBS designation is limited to protection of marine life from ~~wastewater~~ waste discharges.

3. Nominations ~~received by the SWRCB or a RWQCB~~ that fulfill the requirements of paragraph 1. above may be considered at any time, but not later than the next scheduled triennial review of the appropriate Basin Plan or Ocean Plan.

Comment 5.45: Center for Marine Conservation, et.al. We recommend several minor text corrections on pages B-45 and B-46 to make the document internally consistent.

Response: The suggested changes have been made as follows:

SWRCB Nominations

1. The SWRCB shall prepare a Draft Nomination Report meeting the requirements in 4 (a), above, and shall comply with the requirements of 5 above.

2. (a) If the Final Nomination Report recommends approval of the proposed designation, the Executive Director shall ensure that processing of the nomination complies with the CEQA consultation requirements in Section 3778, Title 23, California Code of Regulations for consideration of the proposed designation. The SWRCB Executive Director shall place consideration of the Final Nomination Report's recommendation on the SWRCB meeting agenda for action by the board.

(b) If the Final Nomination Report recommends against approval of the proposed designation, the Executive Director shall notify interested parties of the decision.

No further action need be taken. The nominating party may seek reconsideration of the decision by the SWRCB itself.

Procedures for Petitions for Change in OSRW Designation

1. Any person may file a petition with the SWRCB or a RWQCB to modify the boundary of, lower the water quality of, or remove the designation for an OSRW. The ~~designation~~ petition shall include . . .

Comment 5.46: Sanitation Districts of Los Angeles County, California Manufacturers & Technology Association et.al. We respectively request that Issue 5 be withdrawn from consideration. Issue 5 is contradictory to the intent of the Legislature. Definitions of ASBS, ONRW, and OSRW were deleted from SB 1834 by the Legislature prior to its consideration by the Governor. The proposed ONRW and OSRW categories do not meet the APA Standards for authority, necessity, clarity, or consistency. The prohibition of storm water discharge contradicts the requirements of AB 2800 that is adopted and becomes effective January 1, 2001. Lastly, consideration of Issue 5 should be deferred until after US EPA implementation of Executive Order 13158, as federal regulations being considered may conflict with the proposed amendments.

Response: The commenters discuss the prohibition language, which is unchanged, except for allowing short-term exceptions. They are essentially arguing that the deletion of language from a bill, which was subsequently vetoed by the Governor, conveys legislative intent. No legislative intent can be discerned from the amendments to this bill, especially in light of its subsequent veto. Regarding AB 2800, this bill specifically allows prohibition of point source discharges, which includes storm water. Finally, the SWRCB sees no reason to delay action based on a potential future federal regulation. If a regulation is later adopted, it may be considered in the next triennial review.

Comment 5.47: Tri-TAC, CASA, SCAP. We oppose the SWRCB's proposal to include definitions and procedures for the designation and implementation of ONRW, OSRW, and ASBS in the Ocean Plan.

Response: Opposition to include definitions and procedures for the designation and implementation of ONRW, OSRW, and ASBS in the Ocean Plan is noted. The commenters did not elaborate on the basis for the opposition.

Comment 5.48: Center for Marine Conservation, et.al. We are concerned that even short-term discharges into ASBS can have lasting effects on the biological communities, which are extremely sensitive to changes in water quality. We request that this new ASBS short-term discharge language be removed from the final Ocean Plan document.

Response: The intent of this exception is to accommodate necessary short-term activities such as road or bridge repairs. The language limits such activities to those that may result in temporary and short-term changes. Such activities would only be permitted after a RWQCB or the SWRCB determined that the potential water quality impact would be interim and not pose a threat to protected resources. Activities that would result in permanent degradation would not be permitted.

Comment 5.49: Center for Marine Conservation, et.al. The 2000 dFFED states that if the RWQCB staff determines that a petition for designation of an ASBS, ONRW, or OSRW is rejected, no further action is necessary. We ask that the language in the 2000 dFFED be revised to provide petitioners with a hearing before the applicable RWQCB on rejected petitions.

Response: Ultimately, the decision to approve or deny a nomination is for the RWQCB. However, a requirement that a hearing be held in all cases would consume valuable time and resources that the Board needs for other matters. Procedure 6(b) indicates that, upon a recommendation for denial,

> "The nominating party may seek reconsideration of the decision by the RWQCB itself."

Comment 5.50: Center for Marine Conservation, et.al. The 1998 FED and 2000 dFFED address the issue of modifying OSRW boundaries. The 1998 FED states that, among other things, parties proposing the boundary changes must include in their petition:

> An analysis of alternatives to the proposed activity, or enhanced treatment alternatives, which could eliminate the need to modify the boundary, or significantly reduce the need to lower the water quality of the OSRW.

This language was eliminated from the dFFED. Instead, the dFFED requires that the petition include:

> Data and information to indicate whether the proposed change may have a significant effect on the environment. If the data or information indicate that the proposed change will have a significant effect on the environment, the petitioner must submit sufficient information and data to identify feasible changes in the proposal that will mitigate or avoid the significant environmental effects.

We request that the above-quoted language from the 1998 FED be reinserted into the dFFED. Petitioners proposing to change the boundaries of designated waters should be required to show that they have considered all alternatives to de-designating portions of the OSRW – regardless of whether a "significant impact" is involved.

Response: The SWRCB supports the revised text. Consistent with CEQA guidelines, an alternative analysis is not required for Negative Declarations or Mitigated Negative Declarations. Under the proposed amendment, proposed changes would only be allowed when any potential impacts are avoided or mitigated to a less than significant level. The revised language provides the information necessary to comply with CEQA.

Comment 5.51: Center for Marine Conservation, et.al. The dFFED states that nominations for new ONRWs and OSRWs may be considered at any time, but in any event not later than the next scheduled triennial review of the appropriate Basin Plan or Ocean Plan. Similar language is used for the consideration of ASBS petitions, although the reference to the Ocean Plan is omitted. We request that, if the current language is retained, "basin plan" in the ASBS petition review section be replaced with "appropriate Basin Plan or Ocean Plan," for consistency with the ONRW and OSRW procedures. However, we do propose another change that would make this request moot. In particular, we request that the time frame for consideration be modified, as the current time frame could allow for a three-year (or longer) delay in reviewing petitions. Conversely, the current language would also force the RWQCBs to consider petitions made just before a triennial review in almost infeasible haste. To address these concerns, we ask that the dFFED language state that "in no event shall a nomination be considered later than three months from receipt of the petition by the RWQCB."

Response: The phrase "appropriate Basin Plan or Ocean Plan" is inserted as suggested. SWRCB does not support the recommendation that a petition must be considered within three months of receipt. Such a shortened period would not allow sufficient time for the Executive Officer to prepare the Nomination Report, circulate it to other agencies for comment, receive and compile agency comments, and comply with CEQA.

Comment 5.52: Surfrider Foundation. ONRW and OSRW should be included as beneficial uses.

Response: Support for identifying ONRW and OSRW as Beneficial Uses in the Ocean Plan is noted. These designations are not proposed to be Beneficial Uses in the Ocean Plan.

Comment 5.53: Surfrider Foundation. New discharges should be permitted in ONRWs.

Response: US EPA has approved the following guidance on ONRW, as cited in the dFFED on page 116:

> *In "high quality" waters that are designated as ONRW, the lowering of water quality is prohibited. US EPA has stated the belief that the best way to ensure that water quality is not lowered is to prohibit new or increased discharges to ONRW, and to tributaries to ONRW, that would result in lower water quality in the ONRW.* (US EPA 1994a pg 4-10) (FR 64819 1996)
>
> *The only exception to the above interpretation is that states may allow some limited activities that result in temporary and short-term changes in water quality in the ONRW. Such activities must not permanently degrade water quality or result in water quality lower than that necessary to protect the existing uses of the ONRW* (US EPA 1994a pg 4-12).

Comment 5.54: Surfrider Foundation. US EPA should establish a process to allow citizens to petition for the designation of ONRWs

Response: The commenter should present this comment to the US EPA. The SWRCB does not have the authority to establish federal procedures.

Comment 5.55: Surfrider Foundation. Discharges that lower water quality in undesignated but *de facto* Tier 3 waters should not be permitted if it can be shown that waters are of exceptional recreational or ecological value.

Response: If locations are determined to be of sufficient quality, they should be nominated for ONRW, OSRW, or ASBS designation. The SWRCB cannot require restrictions associated with special status designation to locations that are not appropriately designated as such.

Comment 5.56: Tri-TAC/CASA/SCAP. ASBS and the ONRW programs are clearly defined in State policy or federal regulations, and there is no need to include duplicative effort in the Ocean Plan. The Administrative Procedures Manual (APM) is available to the public, and there is no reason to include the designation procedures for either ASBS or ONWR in the Ocean Plan.

Response: As the Water Quality Control Plan, the Ocean Plan is the appropriate location for presenting ASBS and ONRW definitions and procedures. The APM is not adopted pursuant to the Administrative Procedure Act, and therefore has not been the subject of full public review and comment. Amendment of the Ocean Plan is proposed to consolidate the definitions, procedures, and list of approved special status sites under a single logical location.

Comment 5.57: Tri-TAC/CASA/SCAP. Tri-TAC strongly objects to the OSWR designation (Tier 2 ½). This designation is not defined in federal regulations and creates an unnecessary layer of regulation and in essence adds just another listing process. We believe that sufficient flexibility exists under Tier 2 and Tier 3 without having to create new designations. As presently defined, the ONRW and the OSRW are exactly the same. With no water quality distinction, the promise of flexibility would appear false, and the ultimate impact of the OSRW designation would not differ from that of the ONRW designation.

Response: The following discussion is presented on page 117 of the dFFED,

> Although the US EPA has accepted Tier 2½ standards in water quality programs prepared by several states, the category has not been formally defined in federal regulations. However, the concept is described in the US EPA Water Quality Standards Handbook, Second Edition, on page 4-2 (US EPA 1994a) as follows:
>
> *A category of waters may be designated in order to provide more stringent water quality protection than the Tier 2 level afforded to "high quality waters", but provide some flexibility to make changes consistent with important social and economic development on, or upstream of, ONRW. This category has been called a "Tier 2½" level of protection (US EPA 1994a pg 4-2). Such waters have been given various names to differentiate them from ONRW, such as "Outstanding State Resource Waters" (OSRW).*
>
> On page 118, the dFFED indicates "The proposed OSRW designation is essentially identical to the proposed ONRW designation except that it ensures the state has the future ability to reevaluate appropriateness of designated areas."

Comment 5.58: Tri-TAC/CASA/SCAP. There is no compelling reason for adopting the recommended alternatives. As described in the dFFED, the SWRCB seeks only to provide information to interested parties who appear to be no longer interested in the ONRW designation.

Response: The following explanations are presented on page 116 and page 118 of the dFFED, respectively.

> Historically, large sections of the California coast have remained undeveloped and relatively inaccessible. However, continuing growth throughout the State is exerting increasing demands on all natural resources, including coastal ocean waters. As a result, the SWRCB recognizes the need to expand the levels of protection that can be employed to address specific water quality protection needs. Currently, the only special protection category available in the Ocean Plan is the ASBS, which is limited in application to specific biological conditions. The proposed ONRW designation is applicable to larger areas and diverse conditions not appropriately addressed by the existing ASBS designation. (dFFED, page 116)
>
> As discussed under ONRW above, ASBS is the only special protection category currently available in the Ocean Plan. However, ASBS is limited in application to specific biological conditions. The ONRW and OSRW designations are applicable to larger areas supporting more diverse conditions than those protected by the ASBS category. (dFFED page 118)

Comment 5.59: Tri-TAC/CASA/SCAP. Commenters disagree with the proposal to include public nominations. We do not believe this is the appropriate approach for making nominations, which should be done only by the SWRCB and RWQCB when developing water quality control plans. This proposal would result in significant demands on RWQCB staffs that are already overwhelmed with permitting TMDL development and other core program requirements. Tri-TAC is also concerned that any request to modify or renew a waste discharge permit could be used as a mechanism that requires an area be considered for designation. Moreover, the permittee may be required to spend additional time and money to develop factual information unrelated to the requested action.

Response: The opposition to allowing public nomination is noted. Public nomination of ASBS is already allowed, but the process has not been clarified in compliance with the Administrative Procedure

Act. Similar procedures are proposed for the ONRW and OSRW designations. All nominations would be subject to RWQCB and/or SWRCB review and approval. The SWRCB believes the public has a legitimate interest in the designation of its waters.

Comment 5.60: Tri-TAC/CASA/SCAP. Potential water quality impacts from existing discharges should be considered at the time of the proposed designation, not after the designation is made. If an area is not attaining water quality standards, then by definition the area does not qualify as high quality water eligible for special protection.

Response: Locations that do not support the level of high water quality prerequisite to designation would not be considered for designation. The economic impacts of designation would be considered during evaluation of a nominated location. Please refer to the response to comment 5.22 in the dFFED. The potential impacts to existing discharges would be considered before a designation is approved or denied. After approval, ongoing monitoring of existing discharges would be required as appropriate to ensure the documented high water quality is not degraded.

Comment 5.61: Tri-TAC/CASA/SCAP. The second sentence under the definition of EXISTING should be changed to "Changes in … will be considered existing waste discharge to the extent that prior to the date of approval of the water quality control plan or designated area, such changes: (1) have been approved by the local permitting authority; (2) are required to accommodate growth planned for in an approved local coastal program; (3) are under construction;(4) are mandated under a cease and desist order issue; or (5) are referenced in the existing waste discharge requirements for the facility."

Response: Please refer to comment 5.13 regarding the ability of the SWRCB to rely upon local coastal plan land use designations. The proposed changes may not effectively protect existing high quality water, since they would allow significant increases in discharges without considering the impacts to water quality.

Comment 5.62: Sempra Energy. To the extent that the proposed language is retained in the Ocean Plan, there is some language that needs further clarification. In Section F.2.a there is a reference to "…the best water quality of the receiving waters…" This language is ambiguous in that it does not specify the average period over which the "best" water quality would be determined. This should be clarified and interested parties should be given the opportunity to comment on the proposed language prior to its adoption.

Response: The term "best water quality" is contained in the proposed definition of EXISTING* WATER QUALITY for ONRW and OSRW. The proposed definition of EXISTING* WATER QUALITY is,

> EXISTING WATER QUALITY: As related to the designation of ONRW and OSRW means, at a minimum, the best water quality actually obtained in the water body on or after November 28, 1975.

ONRW and OSRW are special protection designations established by federal antidegradation regulations. On page 115, the dFFED provides the following explanation:

> *Tier 1 (40 CFR Section 131.12(a)(1)) provides that existing instream water uses and the level of water quality necessary to protect the beneficial uses shall be maintained and protected. "Existing uses" are defined by Section 131.3 as those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in water quality standard.*

Consequently, "best water quality" is the water quality that supported the greatest number of beneficial uses on or after November 28, 1975.

Comment 5.63: Krieger. Commenter requests clarification of the requirements regarding the discharge of storm water into waterways with special designations.

Response: The proposed amendments do not alter the prohibition of discharge in the Ocean Plan. Interpretation of the prohibition is not being considered now, but may be considered in the future.

Comment 5.64: Krieger. The proposed amendments would seem to additionally prohibit discharges (even short-term ones) resulting from construction of new permanent facilities such as parks, bridges, roadways, or related transportation facilities such as vista points. (Note: this comment is about ASBS)

Response: The proposed amendments do not alter the prohibition of discharge to ASBS, except to provide limited flexibility to allow short-term discharges, which could include discharges from operational and maintenance type activities such as road or bridge repairs.

Comment 5.65: Krieger. Discharges of storm water and other runoff from roadways and related facilities to current and future ASBS are prohibited. These wastewaters must be captured and transported to a discharge location far enough from the ASBS that natural water quality conditions are maintained within the ASBS. It would be helpful to define numerically, what no impact means since some very dilute but potentially measurable pollutants can be carried for great distances by coastal currents.

Response: The proposed amendments do not alter the prohibition of discharge in the Ocean Plan. Interpretation of the prohibition is not being considered now, but may be considered in the future.

Comment 5.66: Krieger. No new culverts, bridges, streambed reconfigurations, or related facilities can be constructed such that any discharge to an ASBS will occur. This will prevent, for example, the construction of a bridge pier in a river entering an ASBS or a culvert for a seasonal waterway.

Response: The proposed amendments do not alter the prohibition of discharge in the Ocean Plan. Interpretation of the prohibition is not being considered now, but may be considered in the future.

Comment 5.67: Krieger. Existing discharges of storm water runoff to waters designated as ONRW or OSRW will have to be removed if they have caused any lowering of water quality from "the best water quality of the receiving waters since November 28, 1975." I understand that the only waters currently having this designation are Lake Tahoe and Mono Lake. Since traffic in urban areas (Truckee, South Lake Tahoe), suburban residential streets, and on state highways in the Lake Tahoe basin, for example, has increased substantially since 1975, we must presume that the runoff of roadway pollutants must have also increased correspondingly, with subsequent lowering of "existing [i.e., 1975] water quality." Consequently, it would appear that these discharges must either be removed or treated to 1975 levels (or lower levels if pollutant loading was somehow decreased in a later year). It will be difficult to establish the precise level of pollutant loading which has been the lowest since 1975. The only unequivocal solution would be to remove all these discharges from the Basin or to provide treatment and infiltration for all storm water.

Response: Please refer to the response to comment 5.62 regarding the definition of best water quality. The amendments clarify the procedures for designation of ONRW and OSRW, but do not change the level of protection for these waters. The level of protection is mandated by existing requirements of the State and federal anti-degradation policies.

Comment 5.68: Krieger. Additional controls may be required if discharges remain in waters designated ONRW or OSRW.

Response: The amendments clarify the procedures for designation of ONRW and OSRW, but do not change the level of protection for these waters. The level of protection is mandated by existing requirements of the State and federal anti-degradation policies. Consideration of any impacts from designation will occur during the designation process.

Comment 5.69: Krieger. The dFFED states, "The proposed Ocean Plan amendments do not alter the State's existing regulatory framework for controlling storm water and nonpoint sources of discharge." However, as discussed above, it appears that the amendments will have a major impact on many existing discharges and will force alteration in existing storm water management programs. The Ocean Plan dFFED does not appear to consider the economic considerations of these impacts on the State highway system, as required by Water Code Section 13241.

Response: The prohibition of the discharge of waste into or near an ASBS is already in the Ocean Plan. The proposed amendments being considered at this time do not change the prohibition, except to allow short-term discharges. The revision to ONRW and OSRW concerns only the designation process, and not the level of protection.

Comment 5.70: Latham & Watkins. The phrases "exceptional recreational or ecological significance" and "high quality waters" are ambiguous. Please consider providing clarification as to which waters are potentially included within the categories ONRW and OSRW. The absence of sufficient standards prevents interested parties from receiving proper notice as to which waters potentially fall into these categories and could hinder consistent application.

Response: The phrases "exceptional recreational or ecological significance" and "high quality waters" are from federal regulation. 40 CFR 131.12(a)(3) provides that where *high quality waters* constitute an outstanding national resource, such as waters of national and State parks and wildlife refuges and waters of *exceptional recreational or ecological significance*, that water quality shall be maintained and protected.

Comment 5.71: Latham & Watkins. There does not appear to be any distinction between waters potentially included within ONRW and OSRW, even though there is great significance attached to a water being classified in one category or the other. Please consider providing clarification to explain fully which waters are potentially included within each category.

Response: As indicated on page 118 of the dFFED, the proposed OSRW designation is essentially identical to the proposed ONRW designation except that the State retains the ability to reevaluate any OSRW at a future date. The determination that any nomination is most appropriately an ONRW or OSRW is a discretionary decision of the SWRCB.

Comment 5.72: Latham & Watkins. The proposed threshold for an individual to initiate nomination proceedings is too low, thereby creating the probability of abuse by individual nominating parties and the delegation of unreasonable expense upon interested parties. Please consider amending the nomination procedures to create a greater threshold before individuals are allowed to initiate nomination proceedings.

Response: Public nomination of ASBS is allowed by existing procedures. The proposed amendments simply clarify the nomination procedures, and extend them to ONRW and OSRW. The level of protection is unchanged. The SWRCB encourages the participation of the public in the nomination process.

Comment 5.73: Latham & Watkins. Please consider adding the proposed ASBS procedural provision that requires nominating individuals to provide information to show that candidate areas need protection beyond that offered by existing waste discharge restrictions as a threshold requirement for the nomination of ONRW and OSRW.

Response: The requirement to demonstrate a "need for additional protection" is not a criterion identified in federal regulation, 40 CFR 131, and, accordingly, is not included in the proposed criteria to be added to the Ocean Plan.

Comment 5.74: Latham & Watkins. Please consider conducting additional hearings and studies regarding the general economic impacts of the proposed addition of the categories ONRW and OSRW to the Ocean Plan.

Response: Please refer to comment 5.22 in the dFFED regarding the economic analysis. The process for nomination is described in detail in the dFFED, including the proposed procedures. The focus of the currently proposed amendment is adoption of a process and does not include the consideration of any locations for any designation. It is inappropriate, and infeasible, to evaluate the possible merits or adverse impacts of any nomination that may or may not be proposed at some future date. Any nominations that are submitted in the future will be evaluated on their individual merits at the time they are presented. Some may be approved while others may be denied. It would be speculative to predict locations that may be nominated in the future, or the potential impact on discharges that may or may not exist at that time.

Comment 5.75: Heal The Bay. The RWQCBs only apply Ocean Plan objectives to NPDES permitted point sources such as POTWs, refineries, and power plants. All violations of Ocean Plan objectives caused by storm water and nonpoint sources are ignored. When will the SWRCB use the Ocean Plan as a regulatory tool to insure that the public health and marine life are protected in ocean waters?

Response: The water quality objectives from the Ocean Plan are routinely applied in the regulation of coastal discharges. Regulation of point source discharges has been of the highest priority as such discharges were thought to pose the greatest threat to coastal water quality. Recognizing recent research conclusions to the contrary, the SWRCB is implementing a variety of programs to control nonpoint source pollution, notably the recently released Plan for California's Nonpoint Source Pollution Control Program. Storm water and nonpoint source discharges are issues scheduled for consideration during the next Ocean Plan triennial review.

Issue 6: Administrative Changes in the California Ocean Plan

Comment 6.30: Tri-TAC and Sanitation Districts of Los Angeles County. Commenters believe that the term downstream water is confusing and the term will be difficult to interpret. Definition does not meet APA standard for clarity. The commenters are also concerned about the "conflict between plans" paragraph and that the provision is inconsistent with the Porter-Cologne Act, which states that such plans when adopted supersede any regional water quality control plans for the same waters to the extent of any conflict.

Response: Staff will revise the definition of "downstream ocean waters" to mean waters downstream with respect to ocean currents." "Waters beyond an administrative boundary" are just one subset of waters downstream with respect to ocean currents. In regards to the conflict between other plans, the proposed language is not inconsistent with Section 13170. SWRCB have consistently said that the fact that a provision of one plan is more stringent than a provision of another plan does not create a conflict. Rather, we must comply with the more stringent provision.