

Draft Amendment to the Water Quality Control Plan for Ocean Waters of California Addressing Desalination Facility Intakes, Brine Discharges, and Incorporating Other Nonsubstantive Changes.

This May 1, 2015 draft reflects changes since April 24, 2015 in blue double underline and ~~red double strikethrough~~. Text that has been moved, but not changed, is reflected in green double underline and ~~green double strikethrough~~.

[NOTE: the proposed Desalination Amendment, if adopted, will be inserted into chapter III.M, not L, of the Ocean Plan.]

M. Implementation Provisions for Desalination Facilities\*

1. Applicability and General Provisions

a. Chapter III.M applies to desalination facilities\* using seawater.\* Chapter III.M.2 does not apply to desalination facilities\* operated by a federal agency. Chapter III.M.2, M.3, and M.4 do not apply to portable desalination facilities\* that withdraw less than 0.10 million gallons per day (MGD) of seawater\* and are operated by a governmental agency. These standards do not alter or limit in any way the authority of any public agency to implement its statutory obligations. The Executive Director of the State Water Board may temporarily waive the application of chapter III.M to desalination facilities\* that are operating to serve as a critical short term water supply during a state of emergency as declared by the Governor.

b. Definitions of New, Expanded, and Existing Facilities:

(1) For purposes of chapter III.M, "existing facilities" means desalination facilities\* that have been issued an NPDES permit and all building permits and other governmental approvals necessary to commence construction for which the owner or operator has relied in good faith on those previously-issued permits and approvals and commenced construction of the facility beyond site grading prior to [effective date of this Plan]. ~~Existing facilities do not include a facility for which permits and approvals were issued and construction commenced after January 1, 1977, but for which a regional water board did not make a determination of the best site, design, technology, and mitigations measures feasible, pursuant to Water Code section 13142.5, subdivision (b) (hereafter Water Code section 13142.5(b)).~~

(2) For purposes of chapter III.M, "expanded facilities" means existing facilities for which, after [effective date of the Plan], the owner or operator does either of the following in a manner that could increase

intake or mortality of all forms of marine life \* beyond that which was originally approved in any NPDES permit or Water Code section 13142.5, subdivision (b) (hereafter Water Code section 13142.5(b)) determination:\* 1) increases the amount of seawater\* used either exclusively by the facility or used by the facility in conjunction with other facilities or uses, or 2) changes the design or operation of the facility. To the extent that the desalination facility\* is co-located with another facility that withdraws water for a different purpose and that other facility reduces the volume of water withdrawn to a level less than the desalination facility's\* volume of water withdrawn, the desalination facility\* is considered to be an expanded facility.

(3) For purposes of chapter III.M, "new facilities" means desalination facilities\* that are not existing facilities or expanded facilities.

- c. Chapter III.M.2 (Water Code §13142.5(b) Determinations for New and Expanded Facilities: Site, Design, Technology, and Mitigation Measures) applies to new and expanded desalination facilities\* withdrawing seawater.\*
- d. Chapter III.M.3 (Receiving Water Limitation for Salinity\*) applies to all desalination facilities\* that discharge into ocean waters\* and wastewater facilities that receive brine\* from seawater\* desalination facilities\* and discharge into ocean waters.\*
- e. Chapter III.M.4 (Monitoring and Reporting Programs) applies to all desalination facilities\* that discharge into ocean waters.\* Chapter III.M.4 shall not apply to a wastewater facility that receives brine\* from a seawater\* desalination facility\* and discharges a positively buoyant commingled effluent through an existing wastewater outfall that is covered under an existing NPDES permit as long as the owner or operator monitors for compliance with the receiving water limitation set forth in chapter III.M.3. For the purposes of chapter III.M.4, a positively buoyant commingled effluent shall mean that the commingled plume rises when it enters the receiving water body due to salinity\* levels in the commingled discharge being lower than the natural background salinity.\*
- f. References to the regional water board include the regional water board acting under delegated authority. For provisions that require consultation between regional water board and State Water Board staff, the regional water board shall notify and consult with the State Water Board staff prior to making a final determination on the item requiring consultation.
- g. All desalination facilities must comply with all other applicable sections of the Ocean Plan.

2. Water Code section 13142.5(b) Determinations for New and Expanded Facilities:  
Site, Design, Technology, and Mitigation Measures Feasibility Considerations

a. General Considerations

- (1) The owner or operator shall submit a request for a Water Code section 13142.5(b) determination to the appropriate regional water board as early as practicable. This request shall include sufficient information for the regional water board to conduct the analyses described below. The regional water board in consultation with the State Water Board staff may require an owner or operator to provide additional studies or information if needed, including any information necessary to identify and assess other potential sources of mortality to all forms of marine life. All studies and models are subject to the approval of the regional water board in consultation with State Water Board staff. The regional water board may require an owner or operator to hire a neutral third party entity to review studies and models and make recommendations to the regional water board.
- (2) The regional water board shall conduct a Water Code section 13142.5(b) analysis of all new and expanded desalination facilities.\* A Water Code section 13142.5(b) analysis may include future expansions at the facility. The regional water board shall first analyze separately as independent considerations a range of feasible\* alternatives for the best available site, the best available design, the best available technology, and the best available mitigation measures to minimize intake and mortality of all forms of marine life.\* Then, the regional water board shall consider all four factors collectively and determine the best combination of feasible\* alternatives to minimize intake and mortality of all forms of marine life.\* The best combination of alternatives may not always include the best alternative under each individual factor because some alternatives may be mutually exclusive, redundant, or not feasible\* in combination.
- (3) The regional water board's Water Code section 13142.5(b) analysis for expanded facilities may be limited to those expansions or other changes that result in the increased intake or mortality of all forms of marine life,\* unless the regional water board determines that additional measures that minimize intake and mortality of all forms of marine life\* are feasible\* for the existing portions of the facility.
- (4) In conducting the Water Code section 13142.5(b) determination, the regional water boards shall consult with other state agencies involved in the permitting of that facility, including, but not limited to: California Coastal Commission, California State Lands Commission, and

California Department of Fish and Wildlife. The regional water board shall consider project-specific decisions made by other state agencies; however, the regional water board is not limited to project-specific requirements set forth by other agencies and may include additional requirements in a Water Code section 13142.5(b) determination.

- (5) A regional water board may expressly condition a Water Code section 13142.5(b) determination based on the expectation of the occurrence of a future event. Such future events may include, but are not limited to, the permanent shutdown of a co-located power plant with intake structures shared with the desalination facility\* or a reduction in the volume of wastewater available for the dilution of brine.\* The regional water board must make a new Water Code section 13142.5(b) determination if the foreseeable future event occurs.
- (a) The owner or operator shall provide notice to the regional water board as soon as it becomes aware that the expected future event will occur, and shall submit a new request for a Water Code section 13142.5(b) determination to the regional water board at least one year prior to the event occurring. If the owner or operator does not become aware that the event will occur at least one year prior to the event occurring, the owner or operator shall submit the request as soon as possible.
  - (b) The regional water board may allow up to five years from the date of the event for the owner or operator to make modifications to the facility required by a new Water Code section 13142.5(b) determination, provided that the regional water board finds that 1) any water supply interruption resulting from the facility modifications requires additional time for water users to obtain a temporary replacement supply or 2) such a compliance period is otherwise in the public interest and reasonably required for modification of the facility to comply with the determination.
  - (c) If the regional water board makes a Water Code section 13142.5(b) determination for a desalination facility\* that will be co-located with a power plant, the regional water board shall condition its determination on the power plant remaining in compliance with the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling.
- b. Site is the general onshore and offshore location of a new or expanded facility. There may be multiple potential facility design configurations within any given site. For each potential site, in order to determine whether a

proposed facility site is the best available site feasible\* to minimize intake and mortality of all forms of marine life,\* the regional water board shall require the owner or operator to:

- (1) Consider whether subsurface intakes\* are feasible.\*
  - (2) Consider whether the identified need for desalinated\* water is consistent with an applicable adopted urban water management plan [prepared in accordance with Water Code section 10631](#), or if no urban water management plan is available, other water planning documents such as a county general plan or integrated regional water management plan.
  - (3) Analyze the feasibility of placing intake, discharge, and other facility infrastructure in a location that avoid impacts to sensitive habitats\* and sensitive species.
  - (4) Analyze the direct and indirect effects on all forms of marine life\* resulting from facility construction and operation, individually and in combination with potential anthropogenic effects on all forms of marine life\* resulting from other past, present, and reasonably foreseeable future activities within the area affected by the facility.
  - (5) Analyze oceanographic geologic, hydrogeologic, and seafloor topographic conditions at the site, so that the siting of a facility, including the intakes and discharges, minimizes the intake and mortality of all forms of marine life.\*
  - (6) Analyze the presence of existing [discharge](#) infrastructure, and the availability of wastewater to dilute the facility's brine\* discharge.
  - (7) Ensure that the intake and discharge structures are not located within a MPA or SWQPA\* with the exception of intake structures that do not have marine life mortality associated with the construction, operation, and maintenance of the intake structures (e.g. slant wells). Discharges shall be sited at a sufficient distance from a MPA or SWQPA\* so that the salinity\* within the boundaries of a MPA or SWQPA\* does not exceed natural background salinity.\* To the extent feasible,\* surface intakes shall be sited so as to maximize the distance from a MPA or SWQPA.\*
- c. Design is the size, layout, form, and function of a facility, including the intake capacity and the configuration and type of infrastructure, including intake and outfall structures. The regional water board shall require that the owner or operator perform the following in determining whether a proposed facility

design is the best available design feasible\* to minimize intake and mortality of all forms of marine life:\*

- (1) For each potential site, analyze the potential design configurations of the intake, discharge, and other facility infrastructure to avoid impacts to sensitive habitats\* and sensitive species.
  - (2) If the regional water board determines that subsurface intakes\* are not feasible\* and surface water intakes are proposed instead, analyze potential designs for those intakes in order to minimize the intake and mortality of all forms of marine life.\*
  - (3) Design the outfall so that the brine mixing zone\* does not encompass or otherwise adversely affect existing sensitive habitat.\*
  - (4) Design the outfall so that discharges do not result in dense, negatively-buoyant plumes that result in adverse effects due to elevated salinity\* or hypoxic conditions occurring outside the brine mixing zone.\* An owner or operator must demonstrate that the outfall meets this requirement through plume modeling and/or field studies. Modeling and field studies shall be approved by the regional water board in consultation with State Water Board staff.
  - (5) Design outfall structures to minimize the suspension of benthic sediments.
- d. Technology is the type of equipment, materials,\* and methods that are used to construct and operate the design components of the desalination facility.\* The regional water board shall apply the following considerations in determining whether a proposed technology is the best available technology feasible\* to minimize intake and mortality of all forms of marine life\*:

(1) Considerations for Intake Technology:

(a) Subject to ~~Section chapter I-M~~ 2.a.(2), the regional water board in consultation with State Water Board staff shall require subsurface intakes\* unless it determines that subsurface intakes\* are not feasible\* based upon a comparative analysis of the factors listed below for surface and subsurface intakes.\* A design capacity in excess of the need for desalinated\* water as identified in chapter III.M.2.b.(2) shall not be used by itself to declare subsurface intakes\* as not feasible.\*

i. The regional water board shall consider the following factors in determining feasibility of subsurface intakes:\* geotechnical data,

hydrogeology, benthic topography, oceanographic conditions, presence of sensitive habitats,\* presence of sensitive species, energy use for the entire facility; ~~impact on freshwater aquifers, local water supply, and existing water users; desalinated\* water conveyance, existing infrastructure,~~ design constraints (engineering, constructability), and project life cycle cost. Project life cycle cost shall be determined by evaluating the total cost of planning, design, land acquisition, construction, operations, maintenance, mitigation, equipment replacement and disposal over the lifetime of the facility, in addition to the cost of decommissioning the facility. Subsurface intakes\* shall not be determined to be economically infeasible solely because subsurface intakes\* may be more expensive than surface intakes. Subsurface intakes\* may be determined to be economically infeasible if the additional costs or lost profitability associated with subsurface intakes,\* as compared to surface intakes, would render the desalination facility\* not economically viable. In addition, the regional water board may evaluate other site- and facility-specific factors.

- ii. If the regional water board determines that subsurface intakes\* are not feasible\* for the proposed intake design capacity, it shall determine whether subsurface intakes\* are feasible\* for alternative intake design capacities. The regional water board may find that a combination of subsurface\* and surface intakes is the best feasible\* alternative to minimize intake and mortality of marine life.
- (b) Installation and maintenance of a subsurface intake\* shall avoid, to the maximum extent feasible, the disturbance of sensitive habitats\* and sensitive species.
- (c) If subsurface intakes\* are not feasible, the regional water board may approve a surface water intake subject to the following conditions:
- i. The regional water board shall require that surface water intakes be screened. Screens must be functional while the facility is withdrawing seawater.\*
  - ii. In order to reduce entrainment, all surface water intakes must be screened with a 1.0 mm (0.04 in) or smaller slot size screen when the desalination facility\* is withdrawing seawater.\*

- iii. An owner or operator may use an alternative method of preventing entrainment so long as the alternative method results in intake and mortality of eggs, larvae, and juvenile organisms that is less than or equivalent to a 1.0 mm (0.04 in) slot size screen. The owner or operator must demonstrate the effectiveness of the alternative method to the regional water board. The owner or operator must conduct a study to demonstrate the effectiveness of the alternative method, and use an Empirical Transport Model\* (ETM)/ Area of Production Forgone\* (APF) approach\* to estimate entrainment. The study period shall be at least 12 consecutive months. Sampling for environmental studies shall be designed to account for variation in oceanographic or hydrologic conditions and larval abundance and diversity such that abundance estimates are reasonably accurate. Samples must be collected using a mesh size no larger than 335 microns and individuals collected shall be identified to the lowest taxonomical level practicable. The ETM/APF analysis\* shall evaluate entrainment for a broad range of species, species morphologies, and sizes under the environmental and operational conditions that are representative of the entrained species and the conditions at the full-scale desalination facility.\* At their discretion, the regional water boards may permit the use of existing entrainment data to meet this requirement.
- iv. In order to minimize impingement, through-screen velocity at the surface water intake shall not exceed 0.15 meters per second (0.5 feet per second).

(2) Considerations for Brine\* Discharge Technology:

- (a) The preferred technology for minimizing intake and mortality of all forms of marine life\* resulting from brine\* ~~disposal~~ discharge is to commingle brine\* with wastewater (e.g., agricultural, municipal, industrial, power plant cooling water, etc.) that would otherwise be discharged to the ocean. The wastewater must provide adequate dilution to ensure salinity\* of the commingled discharge meets the receiving water limitation for salinity\* in chapter III.M.3. Nothing in this section shall preclude future recycling of the wastewater.
- (b) Multiport diffusers\* are the next best method for disposing of brine\* when the brine\* cannot be diluted by wastewater and when there are no live organisms in the discharge. Multiport diffusers\* shall be engineered to maximize dilution, minimize the size of the brine



mixing zone,\* minimize the suspension of benthic sediments, and minimize mortality of all forms of marine life.\*

- (c) Brine\* ~~discharge-disposal~~ technologies other than wastewater dilution and multiport diffusers,\* ~~such as flow augmentation,\*~~ may be used if an owner or operator can demonstrate to the regional water board that the technology provides a comparable level of intake and mortality of all forms of marine life\* as wastewater dilution if wastewater is available, or multiport diffusers\* if wastewater is unavailable. The owner or operator must evaluate all of the individual and cumulative effects of the proposed alternative discharge method on the intake and mortality of all forms of marine life\*, including (where applicable); intake-related entrainment, osmotic stress, turbulence that occurs during water conveyance and mixing, and shearing stress at the point of discharge. When determining the intake and mortality associated with a brine\* ~~discharge-disposal~~ technology or combination of technologies, the regional water board shall require the owner or operator to use empirical studies or modeling to:
- i. Estimate intake entrainment impacts using an ETM/APF approach.\*
  - ii. Estimate degradation of all forms of marine life\* from elevated salinity\* within the brine mixing zone,\* including osmotic stresses, the size of impacted area, and the duration that all forms of marine life\* are exposed to the toxic conditions. Considerations shall be given to the most sensitive species, and community structure and function.
  - iii. Estimate the intake and mortality of all forms of marine life\* that occurs as a result of water conveyance, in-plant turbulence or mixing, and waste\* discharge.
  - iv. Within 18 months of beginning operation, submit to the regional water board an empirical study that evaluates intake and mortality of all forms of marine life\* associated with ~~flow augmentation\*~~the alternative brine\* discharge technology. The study must evaluate impacts caused by any augmented intake volume, intake and pump technology, water conveyance, waste brine\* mixing, and effluent discharge. Unless demonstrated otherwise, organisms entrained by ~~flow augmentation\*~~ the alternative brine\* discharge technology are assumed to have a mortality rate of 100 percent. The study period shall be at least 12 consecutive

months. If the regional water board requires a study period longer than 12 months, the final report must be submitted to the regional water board within 6 months of the completion of the empirical study.

- v. If the empirical study shows that ~~flow augmentation\*~~the alternative brine\* ~~discharge-disposal~~ technology results in more intake and mortality of all forms of marine life\* than a facility using wastewater dilution or multiport diffusers,\* then the facility must either (1) cease using ~~flow augmentation\* the alternative brine\* discharge~~ technology and install and use wastewater dilution or multiport diffusers\* to discharge brine\* waste, or (2) re-design the ~~flow augmentation\* the alternative brine\* discharge~~ technology system to minimize intake and mortality of all forms of marine life\* to a level that is comparable with wastewater dilution if wastewater is available, or multiport diffusers\* if wastewater is unavailable,\* subject to regional water board approval.

(d) Flow augmentation\* as an alternative brine\* discharge technology is prohibited with the following exceptions:

- i. At facilities that use subsurface intakes\* to supply augmented flow water for dilution. Facilities that use subsurface intakes\* to supply augmented flow water for dilution are exempt from the requirements of chapter III.M.2.d.(2)(c) if the facility meets the receiving water limitation for salinity\* in chapter III.M.3.
- ii. At a facility that has received a conditional Water Code section 13142.5(b) determination and is over 80 percent constructed by [the effective date of this plan]. If the ~~An~~owner or operator of the facility proposes ~~proposing~~ to use flow augmentation\* as an alternative brine\* discharge technology, the facility must: ~~U~~use low turbulence intakes (e.g., screw centrifugal pumps or axial flow pumps) and conveyance pipes; ~~c~~onvey and mix dilution water in a manner that limits thermal stress, osmotic stress, turbulent shear stress, and other factors that could cause intake and mortality of all forms of marine life\*; ~~Facilities proposing to using flow augmentation\* must~~ comply with chapter III.M.2.d.(1); ~~acilities proposing to using flow augmentation\* throh surface intakes are prohibited from~~ and not discharge~~ing~~ through multiport diffusers.\*

- ~~iii. Within three years of beginning operation, submit to the regional water board an empirical study that evaluates intake and mortality of all forms of marine life\* associated with flow augmentation\*. The study must evaluate impacts caused by augmented intake volume, intake and pump technology, water conveyance, waste brine\* mixing, and effluent discharge. Unless demonstrated otherwise, organisms entrained by flow augmentation\* are assumed to have a mortality rate of 100 percent. The study period shall be at least 12 consecutive months.~~
  - ~~iv. If the empirical study shows that flow augmentation\* is less protective of all forms of marine life\* than a facility using wastewater dilution or multiport diffusers,\* then the facility must either (1) cease using flow augmentation\* technology and install and use wastewater dilution or multiport diffusers\* to discharge brine\* waste, or (2) re-design the flow augmentation\* system to minimize intake and mortality of all forms of marine life\* to a level that is comparable with wastewater dilution if wastewater is available, or multiport diffusers if wastewater is unavailable,\* subject to regional water board approval.~~
  - ~~v. Facilities proposing to using flow augmentation\* must comply with chapter III.L.2.d.(1).~~
  - ~~vi. Facilities proposing to using flow augmentation\* through surface intakes are prohibited from discharging through multiport diffusers.\*~~
- ~~(e) Facilities that use subsurface intakes\* to supply augmented flow water for dilution are exempt from the requirements of chapter III.L.2.d.(2) if the facility meets the receiving water limitation for salinity in chapter III.L.3.~~
- e. Mitigation for the purposes of this section is the replacement of all forms of marine life\* or habitat that is lost due to the construction and operation of a desalination facility\* after minimizing intake and mortality of all forms of marine life\* through best available site, design, and technology. The regional water board shall ensure an owner or operator fully mitigates for the operational lifetime of the facility and uses the best available mitigation measures feasible\* to minimize intake and mortality of all forms of marine life.\* The owner or operator may choose whether to satisfy a facility's mitigation measures pursuant to chapter III.M.2.e.(3) or, if available, M.2.e.(4), or a combination of the two.
- (1) *Marine Life Mortality Report.* The owner or operator of a facility shall submit a report to the regional water board estimating the marine life

mortality resulting from construction and operation of the facility after implementation of the facility's required site, design, and technology measures.

- (a) For operational mortality related to intakes, the report shall include a detailed entrainment study. The entrainment study period shall be at least 12 consecutive months and sampling shall be designed to account for variation in oceanographic or hydrologic conditions and larval abundance and diversity such that abundance estimates are reasonably accurate. At their discretion, the regional water boards may permit the use of existing entrainment data from the facility to meet this requirement. Samples must be collected using a mesh size no larger than 335 microns and individuals collected shall be identified to the lowest taxonomical level practicable. The ETM/APF analysis\* shall be representative of the entrained species collected using the 335 micron net. The APF\* shall be calculated using a one-sided, upper 95 percent confidence bound for the 95th percentile of the APF distribution.

**[\*\*NOTE: This language is optional additional language for the board members to consider at the May 6, 2015 board meeting: An owner or operator may use an alternative mitigation assessment method if the method assesses intake and mortality of all forms of marine life\* and can be used to determine the number of mitigation acres needed to fully mitigate for the impacts. The method must be peer reviewed by a neutral third party expert review panel and then approved by the regional water board in consultation with the State Water Board staff.]**

An owner or operator with subsurface intakes\* is not required to do an ETM/APF analysis\* for their intakes and is not required to mitigate for intake-related operational mortality. The regional water board may apply a one percent reduction to the APF\* acreage calculated in the Marine Life Mortality Report to account for the reduction in entrainment of all forms of marine life\* when using a 1.0 mm slot size screen.

- (b) For operational mortality related to discharges, the report shall estimate the area in which salinity\* exceeds 2.0 parts per thousand above natural background salinity\* or a facility-specific alternative receiving water limitation (see [§1 chapter III.M.3](#)). The area in excess of the receiving water limitation for salinity\* shall be determined by modeling and confirmed with monitoring. The report shall use any acceptable approach approved by the regional water board for evaluating mortality that occurs due to shearing stress resulting from the facility's discharge, including any

incremental increase in mortality resulting from a commingled discharge.

- (c) For construction-related mortality, the report shall use any acceptable approach approved by the regional water board for evaluating the mortality that occurs within the area disturbed by the facility's construction. The regional water board may determine that the construction-related disturbance does not require mitigation because the disturbance is temporary and the habitat is naturally restored.
  - (d) Upon approval of the report by the regional water board in consultation with State Water Board staff, the calculated marine life mortality shall form the basis for the mitigation provided pursuant to this section.
- (2) The owner or operator shall mitigate for the mortality of all forms of marine life\* determined in the report above by choosing to either complete a mitigation project as described in chapter III.M.2.e.(3) or, if an appropriate fee-based mitigation program is available, provide funding for the program as described in chapter III.M.2.e.(4). The mitigation project or the use of a fee-based mitigation program and the amount of the fee that the owner or operator must pay is subject to regional water board approval.
- (3) *Mitigation Option 1: Complete a Mitigation Project.* The mitigation project must satisfy the following provisions:
- (a) The owner or operator shall submit a Mitigation Plan. Mitigation Plans shall include: project objectives, site selection, site protection instrument (the legal arrangement or instrument that will be used to ensure the long-term protection of the compensatory mitigation project site), baseline site conditions, a mitigation work plan, a maintenance plan, a long-term management plan, an adaptive management plan, performance standards and success criteria, monitoring requirements, and financial assurances.
  - (b) The mitigation project must meet the following requirements:
    - i. Mitigation shall be accomplished through expansion, restoration or creation of one or more of the following: kelp beds,\* estuaries,\* coastal wetlands, natural reefs, MPAs, or other projects approved by the regional water board that will mitigate for intake and mortality of all forms of marine life\* associated with the facility.

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- ii. The owner or operator shall demonstrate that the project fully mitigates for intake-related marine life mortality by including expansion, restoration, or creation of habitat based on the APF\* acreage calculated in the Marine Life Mortality Report above. The owner or operator using surface water intakes shall do modeling to evaluate the areal extent of the mitigation project's production area to confirm that it overlaps the facility's source water body.\* Impacts on the mitigation project due to entrainment by the facility must be offset by adding compensatory acreage to the mitigation project.
- iii. The owner or operator shall demonstrate that the project also fully mitigates for the discharge-related marine life mortality projected in the Marine Life Mortality Report above.
- iv. The owner or operator shall demonstrate that the project also fully mitigates for the construction-related marine life mortality identified in the Marine Life Mortality Report above.
- v. The regional water board may permit out-of-kind mitigation\* for mitigation of open water or soft-bottom species. In-kind mitigation\* shall be done for all other species whenever feasible.\*
- vi. For out-of-kind mitigation,\* an owner or operator shall evaluate the biological productivity of the impacted open water or soft-bottom habitat calculated in the Marine Life Mortality Report and the proposed mitigation habitat. If the mitigation habitat is a more biologically productive habitat (e.g. wetlands, estuaries,\* rocky reefs, kelp beds,\* eelgrass beds,\* surfgrass beds\*), the regional water boards may apply a mitigation ratio based on the relative biological productivity of the impacted open water or soft-bottom habitat and the mitigation habitat. The mitigation ratio shall not be less than one acre of mitigation habitat for every ten acres of impacted open water or soft-bottom habitat.
- vii. For in-kind mitigation,\* the mitigation ratio shall not be less than one acre of mitigation habitat for every one acre of impacted habitat.
- viii. For both in-kind\* and out-of-kind mitigation,\* the regional water boards may increase the required mitigation ratio for any species and impacted natural habitat calculated in the Marine Life Mortality Report when appropriate to account for

imprecisions associated with mitigation, including but not limited to, the likelihood of success, temporal delays in productivity, and the difficulty of restoring or establishing the desired productivity functions.

- ix. The rationale for the mitigation ratios must be documented in the administrative record for the permit action.
- (c) The Mitigation Plan is subject to approval by the regional water board in consultation with State Water Board staff and with other agencies having authority to condition approval of the project and require mitigation.
- (4) *Mitigation Option 2: Fee-based Mitigation Program.* If the regional water board determines that an appropriate fee-based mitigation program has been established by a public agency, and that payment of a fee to the mitigation program will result in the creation and ongoing implementation of a mitigation project that meets the requirements of ~~section chapter~~ [M.2.e.\(3\)](#), the owner or operator may pay a fee to the mitigation program in lieu of completing a mitigation project.
- (a) The agency that manages the fee-based mitigation program must have legal and budgetary authority to accept and spend mitigation funds, a history of successful mitigation projects documented by having set and met performance standards for past projects, and stable financial backing in order to manage mitigation sites for the operational life of the facility.
  - (b) The amount of the fee shall be based on the cost of the mitigation project, or if the project is designed to mitigate cumulative impacts from multiple desalination facilities or other development projects, the amount of the fee shall be based on the desalination facility's fair share of the cost of the mitigation project.
  - (c) The manager of the fee-based mitigation program must consult with the California Department of Fish and Wildlife, Ocean Protection Council, Coastal Commission, State Lands Commission, and State and regional water boards to develop mitigation projects that will best compensate for intake and mortality of all forms of marine life\* caused by the desalination facility.\* Mitigation projects that increase or enhance the viability and sustainability of all forms of marine life\* in Marine Protected Areas are preferred, if feasible.\*

- (5) California Department of Fish and Wildlife, the regional water board, and State Water Board may perform audits or site inspections of any mitigation project.
- (6) An owner or operator, or a manager of a fee-based mitigation program, must submit a mitigation project performance report to the regional water board 180 days prior to the expiration date of their NPDES permit.
- (7) For conditionally permitted facilities or expanded facilities, the regional water boards may:
  - (a) Account for previously-approved mitigation projects associated with a facility when making a new Water Code section 13142.5(b) determination.
  - (b) Require additional mitigation when making a new Water Code section 13142.5(b) determination for any additional mortality of all forms of marine life resulting from the occurrence of the conditional event or the expansion of the facility. The additional mitigation must be to compensate for any additional construction, discharge, or other increases in intake or impacts or an increase in intake and mortality of all forms of marine life.\*

3. Receiving Water Limitation for Salinity\*

- a. Chapter III.M.3 is applicable to all desalination facilities discharging brine\* into ocean waters,\* including facilities that commingle brine\* and wastewater.
- b. The receiving water limitation for salinity\* shall be established as described below:
  - (1) Discharges shall not exceed a daily maximum of 2.0 parts per thousand (ppt) above natural background salinity\* measured no further than 100 meters (328 ft) horizontally from ~~the~~ each discharge point. There is no vertical limit to this zone.
  - (2) In determining an effluent limit necessary to meet this receiving water limitation, permit writers shall use the formula in chapter III.C.4 that has been modified for brine\* discharges as follows:

**Equation 1:**  $C_e = C_o + D_m(2.0 \text{ ppt})$   
 $C_e = (2.0 \text{ ppt} + C_s) + D_m(2.0 \text{ ppt})$

Where:

$C_e$  = the effluent concentration limit, ppt



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Co= the salinity\* concentration to be met at the completion of  
initial\* dilution= 2.0 ppt + Cs

Cs= the natural background salinity,\* ppt

Dm= minimum probable initial dilution\* expressed as parts  
seawater\* per part brine\* discharge

- (a) The fixed distance referenced in the initial dilution\* definition shall be no more than 100 meters (328 feet).
  - (b) In addition, the owner or operator shall develop a dilution factor (Dm) based on the distance of 100 meters (328 feet) or initial dilution,\* whichever is smaller. The dilution factor (Dm) shall be developed within the brine mixing zone\* using applicable water quality models that have been approved by the regional water boards in consultation with State Water Board staff.
  - (c) The value 2.0 ppt in Equation 1 is the maximum incremental increase above natural background salinity\* (Cs) allowed at the edge of the brine mixing zone.\* A regional water board may substitute an alternative numeric value for 2.0 ppt in Equation 1 based upon the results of a facility-specific alternative salinity\* receiving water limitation study, as described in chapter III.M.3.c below.
- c. An owner or operator may submit a proposal to the regional water board for approval of an alternative (other than 2 ppt) salinity\* receiving water limitation to be met no further than 100 meters horizontally from the discharge. There is no vertical limit to this zone.
- (1) To determine whether a proposed facility-specific alternative receiving water limitation is adequately protective of beneficial uses, an owner or operator shall:
    - (a) Establish baseline biological conditions at the discharge location and at reference locations over a 12-month period prior to commencing brine\* discharge. The biologic surveys must characterize the ecologic composition of habitat and marine life using measures established by the regional water board. At their discretion, the regional water boards may permit the use of existing data to meet this requirement.
    - (b) Conduct at least the following chronic toxicity\* Whole Effluent Toxicity (WET) tests: germination and growth for giant kelp (*Macrocystis pyrifera*); development for red abalone (*Haliotis refescens*); development and fertilization for purple urchin

(*Strongleocentrotus purpuratus*); development and fertilization for sand dollar (*Dendraster excentricus*); larval growth rate for topsmelt (*Atherniops affinis*). WET tests shall be performed by an Environmental Laboratory Accreditation Program (ELAP) certified laboratory.

- (c) The regional water board in consultation with State Water Board staff may require an owner or operator to do additional toxicity studies if needed.
- (2) The regional water board in consultation with the State Water Board staff may require an owner or operator to provide additional studies or information in order to approve a facility-specific alternative receiving water limitation for salinity.\*
- (3) The facility-specific alternative receiving water limitation shall be based on the lowest observed effect concentration (LOEC)\* for the most sensitive species and toxicity endpoint as determined in the chronic toxicity\* studies. The regional water board in consultation with State Water Board staff has discretion to approve the proposed facility-specific alternative receiving water limitation for salinity.\*
- (4) The regional water board shall review a facility's monitoring data, the studies as required in chapter III.M.4 below, or any other information that the regional water board deems to be relevant to periodically assess whether the facility-specific alternative receiving water limitation for salinity\* is adequately protective of beneficial uses. The regional water board may eliminate or revise a facility-specific alternative receiving water limitation for salinity\* based on its assessment of the data.
- d. The owner or operator of a facility that has received a conditional Water Code section 13142.5(b) determination and is over 80 percent constructed by [the effective date of this plan] that proposes flow augmentation\* using a surface water intake may submit a proposal to the regional water board in consultation with the State Water Board staff for approval of an alternative brine mixing zone\* not to exceed 200 meters laterally from the discharge point and throughout the water column. The owner or operator of such a facility must demonstrate, in accordance with chapter III.M.2.d.(2)(c), that the combination of the alternative brine mixing zone\* and flow augmentation\* using a surface water intake provide a comparable level of intake and mortality of all forms of marine life\* as the combination of the standard brine mixing zone\* and wastewater dilution if wastewater is available, or multiport diffusers\* if wastewater is unavailable. In addition to the analysis of the effects required by chapter III.M.2.d.(2)(c), the owner or operator must also

evaluate the individual and cumulative effects of the alternative brine mixing zone\* on the intake and mortality of all forms of marine life.\* In no case may the discharge result in hypoxic conditions outside of the alternative brine mixing zone.\* If an alternative brine mixing zone\* is approved, the alternative distance and the areal extent of the alternative brine mixing zone\* shall be used in lieu of the standard brine mixing zone\* for all purposes, including establishing an effluent limitation and a receiving water limitation for salinity, in chapter III.M.

d.e. Existing facilities that do not meet the receiving water limitation at the edge of the brine mixing zone\* and throughout the water column by [the effective date of this plan] must either: 1) establish a facility-specific alternative receiving water limitation for salinity\* as described in chapter III.M.3.c; or, 2) upgrade the facility's brine\* discharge method in order to meet the receiving water limitation in chapter III.M.3.b in accordance with the State Water Board's Compliance Schedule Policy, as set forth in (e) below. An owner or operator that chooses to upgrade the facility's method of brine\* ~~discharge-disposal~~:

- (1) Must demonstrate to the regional water board that the brine\* discharge does not negatively impact sensitive habitats,\* sensitive species, MPAs, or SWQPAs.\*
- (2) Is subject to the Considerations for Brine\* Discharge Technology described in chapter III.M.2.d.(2).

e.f. The regional water board may grant compliance schedules for the requirements for brine\* waste discharges for desalination facilities.\* All compliance schedules shall be in accordance with the State Water Board's Compliance Schedule Policy, except that the salinity\* receiving water limitation set forth in chapters III.M.3.b and III.M.3.c. shall be considered to be a "new water quality objective" as used in the Compliance Schedule Policy.

f.g. The regional water board in consultation with the State Water Board staff may require an owner or operator to provide additional studies or information if needed. All studies and models are subject to the approval of the regional water board in consultation with State Water Board staff. The regional water board may require an owner or operator to hire a neutral third party entity to review studies and models and make recommendations to the regional water board.

#### 4. Monitoring and Reporting Programs

- a. The owner or operator of a desalination facility\* must submit a Monitoring and Reporting Plan to the regional water board for approval. The Monitoring and

Reporting Plan shall include monitoring of effluent and receiving water characteristics and impacts to all forms of marine life.\* The Monitoring and Reporting Plan shall, at a minimum, include monitoring for benthic community health, aquatic life toxicity, hypoxia, and receiving water characteristics consistent with Appendix III of this Plan and for compliance with the receiving water limitation in chapter III.M.3. Receiving water monitoring for salinity\* shall be conducted at times when the monitoring locations are most likely affected by the discharge. For new or expanded facilities the following additional requirements apply:

- (1) An owner or operator must perform facility-specific monitoring to demonstrate compliance with the receiving water limitation for salinity,\* and evaluate the potential effects of the discharge within the water column, bottom sediments, and the benthic communities. Facility-specific monitoring is required until the regional water board determines that a regional monitoring program is adequate to ensure compliance with the receiving water limitation. The monitoring and reporting plan shall be reviewed, and revised if necessary, upon NPDES permit renewal.
- (2) Baseline biological conditions shall be established at the discharge location and at a reference location prior to commencement of construction. The owner or operator is required to conduct biological surveys (e.g., Before-After Control-Impact study), that will evaluate the differences between biological communities at a reference site and at the discharge location before and after the discharge commences. The regional water board will use the data and results from the surveys and any other applicable data for evaluating and renewing the requirements set forth in a facility's NPDES permit.

Add the following new definitions to, and amend existing definitions in, Appendix I of the Ocean Plan.

ALL FORMS OF MARINE LIFE includes all life stages of all marine species.

AREA PRODUCTION FOREGONE (APF), also known as habitat production foregone, is an estimate of the area that is required to produce (replace) the same amount of larvae or propagules\* that are removed via entrainment at a desalination facility's\* intakes. APF is calculated by multiplying the proportional mortality\* by the source water body,\* which are both determined using an empirical transport model.\*

BRINE is the byproduct of desalinated\* water having a salinity\* concentration greater than a desalination facility's\* intake source water.

BRINE MIXING ZONE is the area where salinity\* may exceed 2.0 parts per thousand above natural background salinity,\* or the concentration of salinity\* approved as part of

an alternative receiving water limitation. The standard brine mixing zone shall not exceed 100 meters (328 feet) laterally from the points of discharge and throughout the water column. An alternative brine mixing zone, if approved as described in chapter III.M.3.d, shall not exceed 200 meters (656 feet) laterally from the points of discharge and throughout the water column. The brine mixing zone is an allocated impact zone where there may be toxic effects on marine life due to elevated salinity.

DESALINATION FACILITY is an industrial facility that processes water to remove salts and other components from the source water to produce water that is less saline than the source water.

EELGRASS BEDS are aggregations of the aquatic plant species of the genus *Zostera*.

EMPIRICAL TRANSPORT MODEL (ETM) is a methodology for determining the spatial area known as the source water body\* that contains the source water population, which are the organisms that are at risk of entrainment as determined by factors that may include but are not limited to biological, hydrodynamic, and oceanographic data. ETM can also be used to estimate proportional mortality,\*  $P_m$ .

ETM/APF APPROACH or ANALYSIS. For guidance on how to perform an ETM/APF analysis please see Appendix E of the Staff Report for Amendment to the Water Quality Control Plan for Ocean Waters of California Addressing Desalination Facility Intakes, Brine\* Discharges, and the Incorporation of Other Non-substantive Changes.

FEASIBLE, for the purposes of chapter III.M, shall mean capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

FLOW AUGMENTATION is a type of in-plant dilution and occurs when a desalination facility\* withdraws additional source water for the specific purpose of diluting brine\* prior to discharge.

IN-KIND MITIGATION is when the habitat or species lost is the same as what is replaced through mitigation.

KELP BEDS are aggregations of marine algae of the order Laminariales, including species in the genera *Macrocystis*, *Nereocystis*, and *Pelagophycus*. Kelp beds include the total foliage canopy throughout the water column.

LOEC is the lowest observed effect concentration or the lowest concentration of effluent that causes observable adverse effects in exposed test organisms.

MARKET SQUID NURSERIES are comprised of numerous egg capsules, each containing approximately 200 developing embryos, attached in clusters or mops to sandy substrate with moderate water flow. Market squid (*Doryteuthis opalescens*) nurseries occur at a wide range of depths; however, mop densities are greatest in shallow, nearshore waters between ten and 100 meters (328 feet) deep.

MULTIPOINT DIFFUSERS are linear structures consisting of spaced ports or nozzles that are installed on submerged marine outfalls. For the purposes of chapter III.M, multipoint diffusers discharge brine\* waste into an ambient receiving water body and enable rapid mixing, dispersal, and dilution of brine\* within a relatively small area.

NATURAL BACKGROUND SALINITY is the salinity\* at a location that results from naturally occurring processes and is without apparent human influence. For purposes of determining natural background salinity, the mean monthly natural salinity shall be used. Mean monthly natural background salinity shall be determined by averaging 20 years of historical salinity\* data in the proximity of the proposed discharge location and at the depth of the proposed discharge, when feasible.\* For historical data not recorded in parts per thousand, the regional water boards may accept converted data at their discretion. When historical data are not available, natural background salinity shall be determined by measuring salinity\* at depth of proposed discharge for three years, on a weekly basis prior to a desalination facility\* discharging brine,\* and the mean monthly natural salinity\* shall be used to determine natural background salinity. The regional water board may ~~Facilities shall~~ establish a reference location that is representative of ~~with similar~~ natural background salinity at the discharge location to be used for comparison to the salinity\* measured at ~~in ongoing monitoring of brine\* discharges~~ the edge of the brine mixing zone\* for the purpose of determining compliance with the receiving water limitation for salinity.

OUT-OF-KIND MITIGATION is when the habitat or species lost is different than what is replaced through mitigation.

PROPAGULES are structures that are capable of propagating an organism to the next stage in its life cycle via dispersal. Dispersal is the movement of individuals from their birth site to their reproductive grounds.

PROPORTIONAL MORTALITY,  $P_m$ , is percentage of larval organisms or propagules\* in the source water body\* that is expected to be entrained at a desalination facility's\* intake. It is assumed that all entrained larvae or propagules\* die as a result of entrainment.

SALINITY is a measure of the dissolved salts in a volume of water. For the purposes of this Plan, salinity shall be measured using a standard method approved by the regional water board (e.g. Standard Method 2520 B, EPA Method 120.1, EPA Method 160.1) and reported in parts per thousand (ppt). For historical salinity data not recorded in parts per thousand, the regional water boards may accept converted data at their discretion.

SEAWATER is salt water that is in or from the ocean. For the purposes of chapter III.M, seawater includes tidally influenced waters in coastal estuaries and lagoons and underground salt water beneath the seafloor, beach, or other contiguous land with hydrologic connectivity to the ocean.

SENSITIVE HABITATS, for the purposes of this Plan, are kelp beds,\* rocky substrate, surfgrass beds,\* eelgrass beds,\* oyster beds, spawning grounds for state or federally managed species, market squid nurseries,\* or other habitats in need of special protection as determined by the Water Boards.

SOURCE WATER BODY is the spatial area that contains the organisms that are at risk of entrainment at a desalination facility\* as determined by factors that may include but are not limited to biological, hydrodynamic, and oceanographic data.

SUBSURFACE INTAKE, for the purposes of chapter III.M, is an intake withdrawing seawater\* from the area beneath the ocean floor or beneath the surface of the earth inland from the ocean.

SURFGRASS BEDS are aggregations of marine flowering plants of the genus *Phyllospadix*.