
North Coast Regional Water Quality Control Board

July 18, 2016

Mr. Matt Dias
Acting Executive Officer
Board of Forestry and Fire Protection
P. O. Box 944246
Sacramento, CA 94244-2460
Matt.Dias@bof.ca.gov

Dear Mr. Dias:

Subject: Comments on the Board of Forestry and Fire Protection proposed Listed Anadromous Salmonid Amendments, 2016, dated June 3, 2016, Title 14 of the California Code of Regulations

File: Timber, Board of Forestry, General

Enclosed is a Memorandum dated July 18, 2016, which provides Regional Water Board staff comments on the proposed Listed Anadromous Salmonid Amendments, 2016, as published June 3, 2015. These comments were prepared by David Fowler, Regional Water Board staff.

We regret that we did not have the opportunity to provide input during the development process of this proposed rule revision since it was never discussed in Committee. We were therefore unable to provide any input to ensure actions authorized under this regulation comply with Regional Water Quality Control Board water quality requirements.

We are concerned that the proposed rule language sets in stone the limited geographical nature of the Anadromous Salmonid Protection (ASP) Rules. Restricting the geographical extent is inconsistent the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter-Cologne Water Quality Control Act.

We believe that by further restricting the geographical extent of the applicability of the ASP rules, it is likely that the proposed WFMP regulations will not insure compliance with the North Coast water quality requirements, nor the Water Quality Control Plan for the North

Coast Region. We recommend that rules be developed that are consistent with applicable water quality requirements and protection of the applicable beneficial uses of water. This approach would be consistent with the intent section of AB 904 (Public Resources Code § 4597(b)) and help our agencies provide the people of the state with efficient government.

Again, thank you for the opportunity to review and comment. If you or your staff have any questions or concerns regarding our comments or would like additional information, please contact David Fowler (707-576-2756) or Jim Burke (707-576-2289) of our staff.

Sincerely,

Fred Blatt
Division Chief
Nonpoint Source & Surface Water Protection Division

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Enclosure

North Coast Regional Water Quality Control Board

July 18, 2016

To: Fred Blatt
Division Chief
Nonpoint Source & Surface Water Protection Division

From: David Fowler
Representing review staff

Subject: Review and Comments on the Board of Forestry and Fire Protection proposed Listed Anadromous Salmonid Amendments, 2016, dated June 3, 2016, Title 14 of the California Code of Regulations

North Coast Regional Water Quality Control Board (Regional Water Board) staff have completed reviewing the Public Draft of the *Listed Anadromous Salmonid Amendments, 2016*. The Public Review draft of the Listed Anadromous Salmonid Amendments, 2016, text was published by the Board of Forestry and Fire Protection (Board of Forestry) on June 3, 2016 for a 45 day public comment period. Regional Water Board staff have reviewed the draft text.

The Listed Anadromous Salmonid Amendments rule package makes changes to sections 895.1 and 898.2 of the Forest Practice Rules. The change to section 895.1 adds a geographical exclusion to the definition of "Watersheds with Listed Anadromous Salmonids." The revised definition excludes "those portions of watersheds that are upstream of barriers, including large dams (where removal and/or fishway construction has been determined by NMFS and CDFW to not be feasible) and natural barriers, such as long term bedrock falls or large static ancient slides with high-gradient or high-velocity barriers, that NMFS and CDFW have determined are permanent and preclude anadromous fish passage."

The Water Quality Objectives defined in regional Water Quality Control Plans (Basin Plans) apply to all waters of the state, regardless of geographical location. In our September 3, 2009, comments to the Board of Forestry on the then proposed Anadromous Salmonid Protection (ASP) rules, we stated, "While the proposed ASP Rules include application to one planning watershed upstream of the limit of anadromy, they remain limited in geographic extent."

Regional Water Board staff recommend that all provisions of the Forest Practice Rules, including the definition of “Watersheds with Listed Anadromous Salmonids” recognize the need to protect all beneficial uses of water regardless of geographical area, and comply with water quality objectives in accordance with the Basin Plan.

We realize that the goal of the Listed Anadromous Salmonid Amendments, 2016, rule package is to “provide forestry practitioners and forest landowners with assurances that the more restrictive Anadromous Salmonid Protection rules will not necessarily apply to areas where experimental populations are reintroduced above permanent barriers to migration.” We are concerned, however, that the blanket exclusion proposed for section 895.1 is not warranted for areas where experimental populations have not been reintroduced, fails to adequately protect the beneficial uses of water, and further widens the gap between the Forest Practice Rules and the requirements of the Porter Cologne Water Quality Control Act (California Water Code Section 13000 et seq.) and the Basin Plan.