

MEMORANDUM OF AGREEMENT

AMONG THE

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
MONTEREY BAY NATIONAL MARINE SANCTUARY**

~~AND THE~~

U.S. ENVIRONMENTAL PROTECTION AGENCY

~~AND THE~~

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY**

~~AND THE~~

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

~~AND THE~~

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

~~AND THE~~

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

~~AND THE~~

CALIFORNIA COASTAL COMMISSION

NOS Agreement Code: MOA-2015-XXX/xxxx06-075/7271

AND THE
ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS
FOR THE PURPOSE OF ECOSYSTEM-BASED WATER QUALITY
MANAGEMENT

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I. PARTIES AND PURPOSE

- A. This Memorandum of Agreement (Agreement) is among the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of National Marine Sanctuaries (ONMS), through ~~the~~ Monterey Bay National Marine Sanctuary (Sanctuary or MBNMS), and the U. S. Environmental Protection Agency (U.S. EPA), the California Environmental Protection Agency (Cal. EPA), the California State Water Resources Control Board (State Water Board), the California Regional Water Quality Control Board Central Coast Region (Central Coast Water Board), the California Regional Water Quality Control Board San Francisco Bay Region (San Francisco Bay Water Board), the California Coastal Commission (CCC), and the Association of Monterey Bay Area Governments (AMBAG).
- B. The purpose of this Agreement is to provide an ecosystem-based water quality management process that integrates the mandates and expertise of existing coastal and ocean resource and land-use managers and protects the nationally significant resources, qualities, and compatible uses of ~~the MBNMS~~MBNMS and the water quality in the watersheds that drain into ~~the MBNMS~~MBNMS.

II. BACKGROUND

- A. ~~The MBNMS~~MBNMS, designated on September 18, 1992, is the largest in a system of 13 national marine sanctuaries administered by NOAA. ~~The MBNMS~~MBNMS was established for the purposes of resource protection, research, education, and public use of this national treasure. The primary purpose is resource protection. ~~The MBNMS~~MBNMS extends from the high tide mark to as far as 53 miles offshore, covering everything below the water's surface from Marin County to Cambria. It encompasses 276 miles of shoreline, 6,094 square miles of ocean, ~~and extends~~ing an average distance of ~~20-30~~ miles from shore. Within ~~the MBNMS~~MBNMS boundary is one of the largest underwater canyons in North America (the more than two-mile deep Monterey Marine Canyon) and one of the world's most diverse marine ecosystems. ~~The MBNMS~~MBNMS contains a rich array of habitats and is home to numerous mammals, seabirds, fishes, invertebrates, and plants. With its great diversity of habitats and life, ~~the MBNMS~~MBNMS is a national focus for recreation, research, resource protection, and education.
- B. ~~The MBNMS~~MBNMS is adjacent to ~~approximately~~almost three hundred miles of California's coastline, and receives drainage from approximately ~~seven~~eight thousand square miles of land in ~~eleven~~ten major watershed areas. ~~The MBNMS~~MBNMS is susceptible to impacts from non-point, urban, rural, and agricultural sources of pollution. ~~By the time that~~ ~~When~~ ~~r~~rainfall or irrigation

runoff enters streams, rivers, wetlands, estuaries, and ultimately ~~the MBNMS~~MBNMS, it may contain high levels of nutrients, sediments, or ~~dangerous chemicals~~other pollutants that have been ~~picked up~~entrained during the journey from land to sea. Monitoring has shown that, while offshore areas of ~~the MBNMS~~MBNMS are in relatively good condition, near shore coastal areas, harbors, lagoons, estuaries, and tributaries suffer from a number of problems including elevated levels of nitrates, sediments, persistent pesticides, metals, bacteria, pathogens, detergents, and oils. These contaminants can have a variety of biological impacts including bioaccumulation, reduced recruitment of anadromous species, algal blooms, mortality due to toxicity, and transfer of pathogens to wildlife and humans. ~~and interference with~~They can also impact recreational uses of ~~the MBNMS~~MBNMS, i.e. fishing and swimming. Furthermore, development on the coast affects hydrology and stream stability, resulting in potential delivery of altered amounts or locations of freshwater discharges, and additional amounts or locations of pollutant and sediment loading to the near-shore areas.

III. AUTHORITIES

A. NOAA

1. The legal authority for ~~the MBNMS~~MBNMS to enter into this Agreement is the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, specifically 16 U.S.C. 1442(a), which allows the Secretary to enter into cooperative agreements, contracts, or other agreements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of the NMSA.
2. The programmatic authority for ~~the MBNMS~~MBNMS to enter into this Agreement is the NMSA, which includes among its purposes and policies the following (subparagraphs 1, 2, 3, 6, and 7 of 16 U.S.C 1431(b)):
 - a. (1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the Office of National Marine Sanctuaries System;
 - b. (2) to provide authority for the comprehensive and coordinated conservation and management of these marine areas, and the activities affecting them, in a manner which complements existing regulatory authorities;

- c. (3) to maintain the natural biological communities in the national marine sanctuaries, and to protect, and where appropriate, restore and enhance natural habitats, populations, and ecological processes;
 - d. (6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;
 - e. (7) to develop and implement coordinated plans for the protection and management of these areas with appropriate agencies, organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas.
3. To implement the mandates of the NMSA, the regulations for ~~the MBNMS~~MBNMS (15 CFR 922.132) generally prohibit discharges within the boundaries of the Sanctuary with limited exceptions for dredged material, and fishing and vessel operation. Discharges beyond the boundary of the Sanctuary that subsequently enter and injure Sanctuary resources or qualities are similarly prohibited.
 4. The regulations for ~~the MBNMS~~MBNMS (15 CFR 922.134(b)(1)) make provisions for this Agreement. Provisions of the general regulations for the Office of National Marine Sanctuaries Program (15 CFR 922.49) provide that a person may discharge in a manner otherwise prohibited by 15 CFR 922.132, if the person has a valid Federal, State, or local permit or other authorization; NOAA does not object to the issuance of the permit or other authorization; and the discharger complies with any terms and conditions NOAA deems reasonably necessary to protect Sanctuary resources and qualities.

B. U.S. EPA

For the purpose of this MOA, the Federal Water Pollution Control Act, as amended, (Federal Water Pollution Control Act or Clean Water Act (CWA)), 33 U.S.C. 1251 *et seq.*, gives the U.S. EPA authority to regulate point sources of pollution, including certain storm water discharges treated as point sources and other related water pollution control programs. In California, the State Water Resources Control Board and the nine Regional Water Quality Control Boards (Regional Water Boards) operate the National Pollutant Discharge Elimination System (NPDES) program in lieu of U.S. EPA. In addition, title I of the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 *et seq.*), Section 102, gives U.S. EPA authority to permit non-dredged material for the

purpose of dumping into marine waters. Finally, Section 102(2)(G) of the National Environmental Policy Act (42 U.S.C 4332(2)(G)) and Section 203(a) of the MPRSA (33 U.S.C. 1443(a)) enable U.S. EPA to cooperate with and render technical assistance to public and private sector entities to promote the goals of those statutes.

- C. California Environmental Protection Agency, State Water Resources Control Board, Central Coast Regional Water Quality Control Board, and San Francisco Bay Regional Water Quality Control Board

1. In 1991, California's environmental authority was unified in a single Cabinet-level agency, the California Environmental Protection Agency (CalEPA). The State Water Resources Control Board (State Board) is one of six divisions within CalEPA, and has as its primary mission ensuring the highest reasonable quality for waters of the State, while allocating those waters to achieve the optimum balance of beneficial uses. The joint authority of water allocation and water quality protection enables the Water Board to provide comprehensive protection for California's waters. There are nine Regional Water Quality Control Boards (Regional Boards). The mission of the Regional Boards is to develop and enforce water quality objectives and implementation plans that will best protect the beneficial uses of the State's waters, recognizing local differences in climate, topography, geology and hydrology.

1-2. The State and Regional Water Boards are the State agencies with primary responsibility for water quality control in California. The Porter-Cologne Water Quality Control Act, Division 7 (commencing with Section 13000) of the California Water Code (Porter-Cologne or Water Code) provides the legal authority for water quality control. The State Water Board and the Regional Water Boards were established by the Porter-Cologne Water Quality Control Act, Division 7 (commencing with Section 13000) of the California Water Code (Porter-Cologne or Water Code). The State and Regional Water Boards are the State agencies with primary responsibility for water quality control in California. Porter-Cologne provides the legal authority for water quality control. Porter-Cologne, related sections of the California Code of Regulations and U.S. EPA regulations implementing the CWA provide a complete regulatory framework for the regulation of waste discharges to both surface and ground waters. Porter-Cologne also provides for the adoption of water quality control plans and implementation of these plans by adoption of Waste Discharge Requirements (WDRs), prohibitions, and waivers to regulate the discharges of waste that could impact State waters. Enforcement mechanisms are available to ensure that requirements are met.

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~~2.3.~~ The Water Code also provides the necessary authority for the State to operate the NPDES permit program in California in lieu of U.S. EPA. The law is codified in Chapter 5.5, Division 7 of the Water Code. As a result, the issuance of a California NPDES permit under State law satisfies the requirements of the CWA.

~~3.4.~~ The State Water Board's jurisdiction and responsibilities include, but are not limited to:

- a. reviewing, in its discretion, Regional Water Board regulation of discharges into State waters under the Water Code;
- b. developing water quality standards;
- c. adopting and approving water quality control plans and policies;
- d. reviewing, in its discretion, Regional Water Boards' issuance, compliance monitoring, and enforcement of all NPDES permits in California including NPDES general permits and permits for Federal facilities;
- e. overseeing Regional Water Boards' implementation and enforcement of National Pretreatment Program requirements except for NPDES permits incorporating variances granted under CWA Sections 301(h) and 301(m) and permits to dischargers for which U.S. EPA has assumed direct responsibility;
- f. designating State Water Quality Protection Areas (California Public Resources Code Sections 36700(f) and 36710(f)) for the purpose of protecting water quality in areas of high biological productivity and ecological sensitivity;
- g. adopting standards and regulations for waste disposal sites;
- h. implementing Surface Water Ambient Monitoring Program;
- i. administering the State's Water Quality Planning Program pursuant to CWA Section 205(j);
- j. issuing or denying Water Quality Certification for any Federally-licensed or permitted project that may result in discharges to navigable State waters pursuant to CWA Section 401, if the project

involves an appropriation of water, a hydroelectric facility that requires a license from the Federal Energy Regulatory Commission, or other diversion of water for a beneficial use;

- k. developing and implementing the State Non-point Source (NPS) Management Program pursuant to CWA Section 319;
- l. working with the CCC to implement the Coastal NPS Pollution Control Program pursuant to the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Section 6217; and
- m. issuing general and individual NPDES permits, waiving WDRs, and issuing general waste discharge requirements.

~~4-5.~~ The jurisdictional boundaries of the San Francisco Bay and Central Coast Water Boards are described in Water Code Sections 13200(b) and (c), respectively.

~~5-6.~~ The Regional Water Boards have jurisdiction and are responsible for:

- a. regulating waste discharges into State waters;
- ~~b.~~ adopting water quality control plans (basin plans) for the region;
- ~~b-c.~~ developing water quality standards;
- ~~e-d.~~ issuing, monitoring, and enforcing NPDES individual and general permits and other water quality orders within each region;
- ~~d-e.~~ reviewing and enforcing pretreatment standards;
- ~~e-f.~~ issuing, monitoring, and enforcing requirements for waste disposal to land;
- ~~f-g.~~ issuing or denying Water Quality Certification for any Federally-- licensed or permitted project that may result in discharges to navigable State waters pursuant to CWA Section 401, other than Certifications within the State Water Board's jurisdiction; and
- ~~g-h.~~ taking all other planning and regulatory action necessary to assure protection of water quality within the regions.

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D. California Coastal Commission

1. Pursuant to the California Coastal Act of 1976 and the Federal Coastal Zone Management Act of 1972, as amended (CZMA), the CCC has jurisdiction and is responsible for:
 - a. administering the California Coastal Management Program (CCMP);
 - b. receiving grants from the Federal government in support of the coastal management program;
 - c. implementing, through the CCMP's broad planning and regulatory framework, a comprehensive set of specific policies for the protection of coastal resources and the management of orderly development throughout the State's coastal zone;
 - d. reviewing, for consistency with the CCMP, all activities within or outside of the coastal zone that affect land or water uses or natural resources of the coastal zone and that are conducted, permitted, or funded by the Federal government; and
 - e. implementing, pursuant to Section 6217 of CZARA- and in conjunction with the State Water Board, a coastal NPS Pollution Control Program, approved by the U.S. EPA and NOAA in 2000.
2. The Coastal Act grants the CCC authority to issue Coastal Development Permits (CDPs) for any development in the coastal zone until local governments adopt CCC-approved Local Coastal Programs (LCPs). The CCC works with local governments to design LCPs that reflect local coastal issues while meeting the statewide goals and policies of the Coastal Act. Upon certifying a LCP's compliance with Coastal Act requirements, the CCC delegates most permitting and related monitoring and enforcement responsibilities to the local jurisdiction. Several well-defined regulatory responsibilities delineated by the Coastal Act and the CZMA, however, permanently reside with the CCC. Included among these is the aforementioned "Federal consistency" review authority. Distinct sets of State and Federal standards and procedures for determining consistency with the CCMP apply to Federal agency activities, Federally-funded activities, and non-Federal activities that require Federal licenses or permits, including oil and gas exploration, development, and production on the Outer Continental Shelf.

E. AMBAG

1. The AMBAG is a Council of Governments, created as a voluntary agency established by agreement among its members pursuant to a joint powers agreement, and established among its members as an area-wide planning organization responsible for:
 - a. serving as the Metropolitan Regional Clearing House to review and comment on Federal grant applications and proposed Federal projects and other environmental documents and plans prepared pursuant to California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA);
 - b. creating a NPS Water Quality Management Plan, pursuant to its designation by the State in 1975 under Section 208 of the Federal CWA;
 - c. managing Federal transportation funds, reviewing transportation projects or capital improvements in major urban areas, and preparing and endorsing a Transportation Improvement Program and Transportation Plan pursuant to its designation as a Metropolitan Planning Organization (MPO) by the State;
 - d. preparing an air quality plan to ensure consistency with Federal Clean Air Act, National Air Quality Standards;
 - e. preparing a regional hazardous waste management plan in accordance with Tanner Legislation (AB 2948, 1986); and
 - f. preparing a five-year plan of housing needs for each city and county within its jurisdiction, pursuant to the State Housing Element Law.

IV. SCOPE

- A. This Agreement shall apply to California's surface waters, and discharges thereto, originating within the following geographic areas:
 1. throughout all of Monterey, Santa Cruz, Santa Clara, and San Benito counties that drain into ~~the MBNMS~~MBNMS;

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2. those portions of San Luis Obispo County that fall within the Salinas River drainage or that drain into ~~the MBNMS~~MBNMS;
3. those portions of Marin County that drain into ~~the MBNMS~~MBNMS;
4. those portions of San Mateo County that drain into ~~the MBNMS~~MBNMS;
5. those portions of the City and County of San Francisco that drain into ~~the MBNMS~~MBNMS;

B. To achieve its purpose, this Agreement will apply to the following regulatory activities, plans, research, and monitoring efforts:

1. The development and implementation of a Sanctuary Water Quality Protection Program, as outlined in Section VI of this Agreement;
2. NPDES permits ~~(which include municipal storm water discharges from urban areas but not construction or industrial storm water discharges)~~ issued under Section 13377 of the Water Code;
3. WDRs issued under Section 13263 of the Water Code;
4. Waivers of WDRs issued under Section 13269 of the Water Code;
5. Water Quality Certifications issued under Section 401 of the CWA;
6. California Ocean Plan, Thermal Plan, relevant Basin Plans, CWA 208 Plans, California Toxic Rule, Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP);
7. Plan for California's Non-point Source Pollution Control Program (NPS Plan), including any management plans prepared under Sections 319 and 208 of the CWA and under Section 6217 of CZARA;
8. Total Maximum Daily Loads (TMDLs) required under Section 303(d) of the CWA and 40 CFR Part 130; and
9. LCPs prepared pursuant to Public Resources Code Section 30500.

V. TERMS AND CONDITIONS

- A. Water quality protection will require that many of the pollutants and activities affecting ~~the MBNMS~~ be eliminated or reduced through strategies that build on existing federal, state, and local management programs. NOAA and its partners also realize that it is desirable to devise new strategies to address water quality problems more effectively. Each signatory recognizes the added value of leveraging and collaborating between programs. Accordingly, each agency agrees to roles and activities as described below and, subject to the availability of appropriated funds and resources, that will ensure cooperation towards a process that will improve water quality.
- B. ~~The MBNMS~~ will:
1. Facilitate the development of an ecosystem-based, ~~proactive~~ planning policy through the implementation of Sanctuary Water Quality Protection Program Action Plans (see Section VI.B of this Agreement) and coordination with partner programs and permits.
 2. Coordinate the interagency Water Quality Protection Program (WQPP) outlined in Section VI of this Agreement, by organizing committee meetings, facilitating ongoing communication among partner agencies, and developing partnerships and resources for planning and implementation.
 3. Provide holistic, uniform, ecosystem-based protection for all MBNMS resources.
 4. Provide experience and perspective from the national system of sanctuaries, e.g., examples and models of approaches and methods to address similar issues from other sanctuary sites.
 5. Recommend priority corrective actions and compliance schedules addressing point and non-point sources of pollution to restore and maintain the chemical, physical, and biological integrity of ~~the MBNMS~~, including restoration and maintenance of the resources, qualities and compatible uses of ~~the MBNMS~~.
 6. Raise awareness among decision-makers and the public about water quality issues along the central coast to develop support for the program and funding initiatives.
 7. Continue water quality education and volunteer monitoring efforts with partner agencies and jurisdictions.

8. Encourage citizen watershed monitoring groups through the Sanctuary Citizen Watershed Monitoring Network by providing program coordination, volunteer supervision, expertise on quality assurance, monitoring equipment and techniques, and by ensuring that data is properly formatted and is provided an appropriate format for storage, and by possibly providing financial support when appropriate and available.
9. Encourage the State or U.S. EPA to adopt or revise, under applicable Federal and State laws, appropriate water quality standards for ~~the MBNMS~~MBNMS. These standards may include State-adopted water quality objectives or Federally-adopted water quality criteria that may use biological monitoring or assessment methods to ensure protection and restoration of the resources and qualities of ~~the MBNMS~~MBNMS.
10. Provide recommendations on conditions or objections to discharge permits, with appropriate rationale, based on potential injury to MBNMS resources and qualities and compliance with applicable criteria.
11. Provide, where appropriate, authorizations of WDR and NPDES permits, in accordance with NOAA authority and as described in Section VII of this Agreement.
12. Provide evidence and inform the U.S. EPA, the Regional Water Board or the permit applicant of a specific threat of or actual significant injury to ~~the MBNMS~~MBNMS resources or qualities.
13. Review proposed NPDES and WDR permits and CEQA and NEPA documents, preferably prior to public comment periods, and provide an ecosystem-based evaluation that considers cumulative impacts, as outlined in Section VII of this Agreement.
14. Review and comment on water quality plans (i.e., Basin Plans, California Ocean Plan, ~~CWA 208~~ and 319 Plans) and CZMA NPS Programs, Watershed Management Initiatives, and LCPs, during the regularly-scheduled comment period, and make recommendations for integrating NOAA criteria, goals, and objectives into these water quality plans.
15. Coordinate, with Regional Water Boards regarding oversight and enforcement of, ~~the review of annual and five year updates of Storm Water Management Plans for Phase I and Phase II Municipal Separate Storm Sewer Systems (MS4s) and reissuance of Phase I permits, and coordinate with State Board and Regional Water Boards regarding reissuance of the General Phase II Permit.~~

16. Use the Procedures for Referral described in Section VII.G of this Agreement, when NOAA deems appropriate and when not in conflict with applicable review procedures imposed by local, State, or Federal law.
 17. Coordinate with partners to compile and analyze water quality data to assess trends over time and evaluate long-term success of management activities.
 18. Develop mechanisms with the Regional Water Boards to make water quality data and metadata available to the public.
 19. Collaborate with and use the ~~Monterey Bay~~California Marine Sanctuary Foundation, as appropriate, to support and facilitate the implementation of WQPP and partner agency programs.
 20. ~~Every five years, Prepare an annual WQPP update the MBNMS Condition Report sections pertaining to water quality in the offshore, nearshore and estuarine environments~~ to be submitted to signatory agencies, WQPP Committee members, local agencies, stakeholders, and other interested parties.
 21. Establish, at a minimum, a staff position of WQPP Program Director, who will coordinate WQPP implementation.
 22. Ensure adequate opportunity for public participation in all aspects of developing and implementing the WQPP.
- C. The U.S. EPA will:
1. Collaborate and promote implementation of WQPP plans and integrate and leverage efforts with State Water Board plans and programs.
 2. ~~Provide the National Estuaries Program perspective and work collaboratively with the WQPP to develop a wetlands and riparian corridor action plan.~~
 2. _____
 3. ~~Provide technical assistance to evaluate water quality and, as needed, to establish numeric, narrative, and biological criteria and standards to protect water quality and MBNMS resources.~~

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- ~~3. —~~ Work with NOAA and the State and Regional Water Boards to determine whether additional water quality standards should be developed or to take other specific actions to protect MBNMS resources and qualities. Where new or revised water quality standards are appropriate, work with the Parties to develop scientifically sound water quality standards that can be adopted by the State or Regional Water Boards in the appropriate water quality control plans. An appropriate opportunity to provide comments would be a Regional Board's Triennial Review of its Basin Plan.
4. Provide technical assistance with education, training, and enforcement.
5. Use its national perspective to provide technical expertise on Best Management Practices, Management Measures, and water quality criteria.
6. Coordinate enforcement efforts, as appropriate, with MBNMS and State enforcement programs.
7. Encourage collaboration with the WQPP in TMDL implementation.
8. Encourage collaboration among Federal, State, and local water quality monitoring efforts, and provide technical assistance with database development, data storage, and accessibility.
9. Evaluate ~~and promote~~ opportunities for enhancing funding of WQPP plans, including incorporating implementation of WQPP plans into funding measures such as Requests for Proposals (RFP), incorporation of plans into pass-through funding, etc.
10. Work with the State and Regional Water Boards to ensure that all Section 402 NPDES permits are issued timely, protect water quality, and that full compliance with all permit terms is achieved.
11. Work with the State and Regional Water Boards and CCC to ensure that California NPS Program activities, pursuant to CWA Section 319 and CZARA Section 6217, and WQPP goals and strategies are mutually consistent.~~are consistent with WQPP goals and strategies.~~
12. As resources permit, assign staff to participate in WQPP Committee meetings and coordinate on overall WQPP implementation.
13. Develop, in collaboration with NOAA, EPA and the State and Regional Water Boards, a mechanism to coordinate enforcement efforts with

MBNMS enforcement officers to leverage field and investigative resources, where joint enforcement is appropriate.

~~12,~~14.

D. The State Water Board will:

1. Collaborate and promote implementation of WQPP plans and integrate and leverage efforts with State Water Board plans and programs.
2. Work with the CCC to incorporate WQPP strategies and activities when implementing the Coastal NPS Pollution Control Program, pursuant to the CZARA, Section 6217.
3. Ensure, when appropriate, that WQPP Action Plan strategies are incorporated into TMDL implementation plans.
4. Evaluate and promote opportunities for enhancing funding of WQPP plans, including incorporating implementation of WQPP plans into funding measures, such as RFP under grant programs administered by the State, incorporation of plans into pass-through funding, etc.
5. Encourage collaboration with the WQPP and implementation of WQPP Action Plan strategies into NPS program and TMDL guidance documents.
6. Ensure a description of the WQPP and its priority strategies are incorporated into appropriate Watershed Management Initiative chapters.
7. Provide expertise on water quality issues.
8. Adopt, under applicable Federal and State laws, enforceable pollution control measures (including water quality-based effluent limitations and best management practices) and methods to eliminate or reduce pollution from point and non-point sources.
9. Work with NOAA, U.S. EPA, and Regional Water Boards to determine whether additional water quality objectives should be developed or to take other specific actions to protect MBNMS resources and qualities.
10. Work with NOAA, U.S. EPA, and Regional Water Boards to develop scientifically sound criteria and to recommend water quality objectives acceptable for adoption by the State or Regional Water Boards in their respective water quality control plans.

11. Oversee, as appropriate, Regional Water Boards' NPDES permits, water quality certifications, WDRs, and waivers of WDRs that impact or may impact MBNMS resources or qualities.
12. Ensure that NPS implementation programs developed pursuant to the issuance of WDRs, waivers of WDRs, and basin plan prohibitions satisfy the requirements of the Policy for Implementation and Enforcement of the NPS Pollution Control Program (NPS Implementation Policy).
13. Review and provide responses to all petitions filed by NOAA and recommendations made by the Joint Review Board during the referral process outlined in Section VII.G of this Agreement.

~~14.~~ Incorporate participation with the WQPP and attendance at WQPP Committee meetings into appropriate staff job descriptions. Assign a point of contact to assist with State Water Board coordination on WQPP implementation.

~~14.~~

~~Assign a point of contact to assist with State Water Board coordination on WQPP implementation.~~

~~15.~~ Place holder for OP amendment for desalination Develop and present for Board approval an amendment to the California Ocean Plan addressing intake of seawater and brine discharge to ocean waters from new or expanded desalination facilities proposed for construction along the coast and that may affect MBNMS, consistent with the requirements of Porter-Cologne.

~~16.~~ Support and assist in the development of a regional monitoring program that will ultimately integrate storm water, NPDES, agriculture, ASBS, and other local, state, and federal water quality monitoring programs as provided in Section VI of this Agreement.

~~15.~~

E. The Regional Water Boards will:

1. Collaborate on, and promote implementation of, the WQPP plans and integrate and leverage efforts with Regional Water Board plans and programs.

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2. Coordinate with NOAA and all other appropriate agencies to develop and implement NPS control activities.
3. Ensure, when appropriate, that WQPP Action Plan strategies are incorporated into TMDL implementation plans.
4. Ensure that NPS implementation programs developed pursuant to the issuance of WDRs, waivers of WDRs, and basin plan prohibitions satisfy the requirements of the NPS Implementation Policy.
5. Encourage regional cooperation and consistent urban runoff messages by coordinating NPDES Phase I and Phase II efforts with WQPP Urban Runoff Plan implementation.
6. Encourage joint efforts between the permittees and ~~the MBNMS~~ MBNMS on education, technical training, monitoring and control measures.
- ~~7. Coordinate, with NOAA, the review of annual and five-year updates of Storm Water Management Plans.~~
- 8.7. Evaluate opportunities to enhance WQPP plan funding, including providing WQPP plan information, as appropriate, to dischargers considering Supplemental Environmental Projects, etc.
- 9.8. Develop, in collaboration with NOAA, ~~USEPA~~ and the State Water Board, a mechanism to coordinate enforcement efforts with MBNMS enforcement officers to leverage field and investigative resources, where joint enforcement is appropriate.
- 10.9. Provide expertise on water quality issues.
- ~~11. Consider, as appropriate, LCP requirements and other information provided by the CCC when evaluating Storm Water Management Plans and the strategies contained in the WQPP Action Plans. Incorporate WQPP strategies into Watershed Management Initiative (WMI) documents, as appropriate, and work with MBNMS staff to identify priority projects and programs.~~
- 12.10. Include implementation of the WQPP into the five- and fifteen-year NPS Implementation Plans and incorporate activity summaries of collaboration efforts when provided by NOAA ~~describing collaboration efforts~~.

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- ~~13.~~11. Coordinate permit review with MBNMS staff as provided in Section VII of this Agreement.
- ~~14.~~12. Adopt, to the extent allowed under applicable Federal and State laws, enforceable pollution control measures or permit conditions and best management practices and methods to eliminate or reduce pollution from point and non-point sources.
- ~~15.~~13. Issue NPDES permits and WDRs in a timely manner, in accordance with applicable State and Federal laws.
- ~~16.~~14. Coordinate procedure to comment on permits, as outlined in Section VII of this Agreement.
- ~~17.~~15. Consider the comments of NOAA, U.S. EPA, and the State Water Board on whether additional water quality objectives should be developed or on other specific actions taken to protect MBNMS resources and qualities on both a case-by-case basis as well as during the Regional Board's Triennial Review of its Basin Plan.
- ~~18.~~16. Consider the comments of NOAA, U.S. EPA, and the State Water Board to develop scientifically-sound criteria and to recommend water quality objectives that are acceptable for adoption by the ~~State or~~ Regional Water Boards in their water quality control plans.
- ~~19.~~17. Provide NOAA, upon request and, if allowed by law, data and reports from Regional Water Board contracts or activities within ~~the MBNMS~~MBNMS and its watersheds.
- ~~20.~~18. Incorporate measures, as appropriate, in existing comprehensive water quality monitoring programs, such as the Central Coast Ambient Monitoring Program (CCAMP), to determine the sources of pollution causing or contributing to existing or anticipated pollution problems in ~~the MBNMS~~MBNMS.
- ~~21.~~19. Collaborate with other State and Federal agencies, as appropriate, to develop, analyze, synthesize, and report water quality data.
- ~~22.~~20. Coordinate Regional Water Boards' monitoring efforts with the Sanctuary Citizen Watershed Monitoring Network.
- ~~23.~~21. Allow and facilitate qualified volunteer groups' access to unified database, as appropriate.

22. Assign staff to participate in WQPP Committee meetings and coordinate on overall WQPP implementation.
23. EPA Comment – nothing on irrigated lands program and waiver. Include Irrigated Lands Regulatory Program implementation and assessment actions into the five and fifteen year NPS Implementation Plans, as appropriate.
24. Support and assist in the development of a regional monitoring program that will ultimately integrate storm water, NPDES, agriculture, ASBS, and other local, state, and federal water quality monitoring programs as provided in Section VI of this Agreement.
24. —

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F. The CCC will:

1. Collaborate on, and promote implementation of, the WQPP plans and integrate and leverage efforts with CCC plans and programs, ~~including the CCC California Non-point Education for Municipal Officials (NEMO), Critical Coastal Areas (CCA), and Model Urban Runoff Programs (MURP).~~
2. Collaborate on, and promote implementation of, the WQPP plans in conjunction with the CCC's on-going efforts to protect water quality by providing coastal zone management experience from a statewide perspective including:
 - a. regulatory permit and appeal reviews of development that has the potential to generate polluted runoff or create spills;
 - b. certification and periodic reviews of local governments' and other agencies' LCPs (including zoning ordinances and land use plans), public works plans, and other planning efforts that can assist in the proper management of polluted runoff and discharges; and
 - c. implementation of educational, technical assistance, and monitoring programs.
3. Facilitate the appropriate integration of the water quality and other coastal resource protection goals and policies of the California Coastal Act of 1976 (Coastal Act) and CZARA into all aspects of the WQPP.

4. Ensure that the goals and objectives for protection of ~~the MBNMS's MBNMS MBNMS's~~ resources and qualities are addressed in the five year NPS Implementation Plans, including an activity summary within these plans describing collaboration with ~~the MBNMS MBNMS.~~
5. Seek opportunities to integrate and leverage WQPP funding and implementation efforts with CCC and its partner resource management agencies' plans and programs.
6. Adopt, under applicable Federal and State laws, methods to eliminate or reduce pollution from point and non-point sources.
7. Pursue options, as part of its on-going local assistance efforts, to incorporate WQPP strategies (including CEQA analysis and structural/non-structural controls) into LCPs and collaborate with MBNMS staff on implementation.
8. Coordinate with Regional Water Boards to ensure that LCPs are consistent with CWA requirements and, as appropriate, that Coastal Development Permits are consistent with the strategies in the WQPP Action Plans.
9. Cooperate with NOAA, U.S. EPA, State Water Board, Regional Water Boards, and other Federal, State, and local agencies to promote timely issuance of permits and plans relevant to ~~the MBNMS MBNMS.~~
10. Assist with the development of a WQPP wetlands and riparian corridor action plan.
11. Assign staff to participate in WQPP Committee meetings and coordinate on overall WQPP implementation.

G. The AMBAG will:

1. Ensure that the interests of local cities and counties are represented during the discharge permitting and planning review process.
- ~~2. Ensure that any proposed projects or developments are reviewed, when applicable, for consistency with the 208 NPS water quality management plan.~~
- ~~3-2.~~ Participate with other agencies about NPS water quality planning issues pertinent to ~~the MBNMS MBNMS.~~

~~4. Promote use of CEQA checklist and MURP components among member entities.~~

~~5.3.~~ Coordinate with the WQPP to develop regional trainings and workshops for local partners.

~~6.4.~~ Assist with the development of a WQPP wetlands and riparian corridor action plan.

VI. SANCTUARY WATER QUALITY PROTECTION PROGRAM

A. Introduction

1. All Parties recognize that maintaining, and when necessary improving, water quality is key to MBNMS ecosystem protection. Additionally, all Parties recognize that to protect water quality, both point and non-point sources of pollution must be controlled or eliminated. ~~The MBNMS~~ MBNMS seeks to implement strategies contained in its issue-oriented action plans, by exercising NOAA's regulatory authorities and through enforcement actions. Implementation of the strategies and activities in these plans is critical to maintain~~ing~~ and improv~~ing~~e water quality within ~~the MBNMS~~ MBNMS and its watersheds, thus ensuring ecosystem protection.
2. The purpose of the WQPP is to provide a framework for continuous regional coordination, communication, planning and strategy implementation among local, State and Federal agencies, and public and private groups addressing water quality in ~~the MBNMS~~ MBNMS and its watersheds. The organizing principle of the WQPP is founded on a broad perspective that spans numerous hydrological, geological, biological, and jurisdictional boundaries, providing a unique opportunity to develop, coordinate, and enhance water quality protection efforts. An important focus is to coordinate more efficiently the numerous existing programs and projects related to these issues.
3. All Parties also recognize the strong role played by the WQPP partners, including local jurisdictions, non-governmental organizations, and industry. As applicable, each signatory agency is encouraged to collaborate with these entities to further the WQPP and meet the purpose of this program.

4. Using a collaborative multi-stakeholder approach, four detailed issue-specific plans have been developed. The implementation of the strategies in these plans is critical to overall program success, and all Parties agree to assist with this effort according to their described roles.

4-5. The WQPP action plans and other source planning issues (Section C below) were updated and incorporated into the MBNMS Management Plan, released in November 2008. This plan represents a major revision of the site's original management plan and is the result of several years of study, planning, and extensive public input. A Management Plan update is encouraged every 5 years.

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B. WQPP Action Plans

1. *Action Plan I: Implementing Solutions to Urban Runoff*

Developed in 1996, this was the WQPP's first action plan. It was developed in collaboration with the WQPP committee, many of the region's public works representatives, and other stakeholders. It describes seven priority strategies for addressing the problems associated with urban runoff in the region including education and outreach, technical training, CEQA additions, structural and nonstructural controls, sedimentation and erosion, and storm drain inspection.

2. *Action Plan II: Regional Monitoring, Data Access, and Interagency Coordination*

The second WQPP plan, developed in 1996, addresses the need for a continuous and coordinated strategy for regional monitoring of water quality and compilation of water quality data on a regional level. It also addresses the need for access to these data and a continuous regional framework for coordinating ways to address water quality.

3. *Action Plan III: Marinas and Boating*

This action plan, developed in 1997, describes strategies designed to reduce water pollution in ~~the MBNMS~~ MBNMS from certain activities associated with marinas and boating. This plan focuses on pollution reduction through education and training programs and the application of new technologies. Strategies include education, technical training, bilge water disposal and waste oil recovery, hazardous and toxic materials management, vessel maintenance, and pollution reduction.

4. *Action Plan IV: Agriculture and Rural Lands Plan*

Developed in 1999 to address agricultural runoff in the form of sediments, nutrients, and persistent pesticides, the plan outlines 24 strategies intended to protect and enhance the water quality draining into ~~the~~ ~~MBNMS~~~~MBNMS~~ while sustaining the economic viability of agriculture. The strategies include organizing agricultural watershed groups, increasing technical assistance and education, funding and economic incentives for conservation measures, permit coordination for conservation practices, and improving maintenance practices for rural roadways and public lands.

C. Other Source Planning Issues

1. Four additional water quality issues have been addressed through WQPP implementation. Although not formal plans, all Parties agree to assist with these efforts according to their described roles.
 - a. Beach Closures and Microbial Contamination - The issue of microbial contamination in ocean and coastal waters and the number of beach closures and warnings that are issued each year to Sanctuary beaches is an issue being addressed through the WQPP. The goal is to reduce microbial contamination in MBNMS waters and to better identify sources of contamination to effectively allocate resources and evaluate health risks. Among the seven strategies are source control, technical training, education, monitoring, research, and emergency response.
 - b. Wetlands and Riparian Corridor Areas - Because of wetlands' and riparian areas' roles in improving water quality, attenuating flood flows, and supporting biodiversity, the need for ~~an~~ ~~sixth~~-action plan addressing wetlands and riparian management has been identified by the WQPP partners. This future action plan is expected to contain strategies that will evaluate the extent, health, impacts, and restoration opportunities in wetlands and riparian corridors tributary to ~~the~~ ~~MBNMS~~~~MBNMS~~.
 - c. Cruise Ship Discharges -- A wide array of pollutants may be discharged in large volumes from cruise ships in the forms of black water, gray water, or bilge or ballast water. USEPA established the California No Discharge Zone on February 9, 2012. The final rule prohibits the discharge of all sewage (treated or not) from all

large passenger vessels of 300 gross tons or greater, and large oceangoing vessels of 300 gross tons or greater with sewage holding capacity into California marine waters. This is a major step. Although there are a number of existing laws and regulations that partly in addressing this issue but does not include all sanctuary waters. There remains is a need for a more comprehensive, regulatory control on cruise ship discharges within ~~the MBNMS~~ MBNMS, along with improved monitoring, enforcement, ~~and~~ coordination and outreach to the industry.

- d. Desalination - Desalination refers to any of a wide range of technologies that remove salt from water. Desalination plants have the potential to negatively impact the marine environment through the introduction of brine waste effluent and other substances to MBNMS waters. Additionally, the construction of desalination facilities and associated pipelines often causes alteration of the seabed. Concern over current and potential future expansion of the use of desalination within ~~the MBNMS~~ MBNMS has led the staff to develop a regional approach to address desalination, aimed at reducing impacts to marine resources in ~~the MBNMS~~ MBNMS through consideration of facility siting issues, on-site mitigation measures, modeling and monitoring, and outreach and information exchange.

D. Emerging Issues

The WQPP will continually review and evaluate potential impacts to MBNMS water quality and will work with its partners in the WQPP Committee to identify and address these emerging issues.

E. Enforcement

1. MBNMS regulations provide for civil penalties for unauthorized discharges within ~~the MBNMS~~ MBNMS, or for unauthorized discharges outside the boundary of ~~the MBNMS~~ MBNMS that enter and injure a MBNMS resource or quality. This Agreement provides a basis for cooperation among Federal and State enforcement entities for discharges in areas described in Section IV of this Agreement that will maximize limited enforcement resources and capabilities to help ensure the protection of MBNMS resources and qualities. NOAA and the Regional Water Boards agree to coordinate on the investigation of spills and enforcement actions, where appropriate.

2. To ensure coordination of enforcement activities among NOAA, the State Water Board, the Regional Water Boards, and the U.S. EPA, the following procedures will be followed:
 - a. The Regional Water Boards will notify ~~the MBNMS~~ MBNMS at least quarterly about any violations from a permitted facility within the geographic area described in Section IV of this Agreement by copying ~~the MBNMS~~ MBNMS on any non-confidential enforcement report generated for Regional Water Board members from the ~~System for Water Information Management (SWIM), the California Integrated Water Quality System (CIWQS),~~ or other database or tracking mechanism. The Regional Water Boards may also provide confidential enforcement information if there is an acceptable confidentiality agreement with NOAA. MBNMS will also access this information directly through the State Water Board website, when available.
 - b. The Regional Water Boards will copy ~~the MBNMS~~ MBNMS when issuing proposed or final enforcement actions against facilities that either discharged into ~~the MBNMS~~ MBNMS or that discharged beyond the boundary of ~~the MBNMS~~ MBNMS resulting in material or substances entering ~~the MBNMS~~ MBNMS. Notification will only be made for Administrative Civil Liability Complaints and proposed Cease and Desist Orders.
 - c. NOAA will copy the Regional Water Boards and the State Water Board on any NMSA enforcement action undertaken against a discharger by NOAA regarding State Waters of ~~the MBNMS~~ MBNMS.
 - d. After issuance of Administrative Civil Liability Complaints, where the discharger proposes to fund Supplemental Environmental Projects, Regional Water Board staff will consult with the discharger and MBNMS staff for consideration of WQPP-related projects that meet the nexus and other requirements of the State Water Board's Water Quality Enforcement Policy.
 - e. The U.S. EPA will notify NOAA and the Regional Water Boards of any enforcement action taken under its authorities regarding discharges within the scope described in Section IV.A of this Memorandum of Agreement. ~~See Section IV.A, above.~~

Comment [AT3]: NF: We have not been doing this. Consider whether this should continue to be included in the MOA for Region 2.

Comment [b4]: No one has been doing this but we'd like to leave it in.

F. Funding

All Parties agree to promote opportunities to enhance funding to develop and implement WQPP plans, as appropriate. This includes providing guidance to NOAA's and WQPP's partner agencies regarding funding availability and appropriate projects; incorporating implementation of WQPP plans into funding measures such as RFPs for bond, license plate fund, or other grant programs; incorporation of plans into pass-through funding; and incorporating WQPP strategies into guidance documents. The State Water Board and Regional Water Boards, in partnership with the U.S. EPA, direct the limited State and Federal water quality funds to the highest priorities through a voluntary planning process described in the WMI Integrated Plan. To facilitate WQPP implementation, MBNMS staff will work closely with Regional and State Water Boards' staff during the development of the WMI chapter updates so that, as appropriate, WQPP strategies will be identified as priority strategies in the WMI. NOAA and the Regional Water Boards may also collaborate on the development and applicability of Supplemental Environmental Projects and to identify appropriate opportunities for the funding of these projects.

G. Integration of Research and Monitoring Efforts

Action Plan II (Regional Monitoring, Data Access, and Interagency Coordination) directs a continuous and coordinated approach for regional monitoring of water quality and compilation of water quality data. It also addresses the need for access to this data and a continuous regional framework for coordinating ways to address water quality. All Parties to this Agreement agree to collaborate on the implementation of the WQPP, including conducting, coordinating, and integrating monitoring activities to better characterize the health of ~~the MBNMS~~ MBNMS and its watersheds, assisting resource managers to evaluate the effectiveness of management activities, and direct future improvement efforts.

H. MBNMS Criteria

1. The U.S. EPA has promulgated water quality criteria for toxic priority pollutants in the California Toxics Rule, 40 CFR §131.18. In addition, criteria guidance are proposed values intended to provide a non-regulatory, scientific evaluation of the ecological effects of pollutants. The U.S. EPA has published numeric water quality criteria guidance for priority pollutants under CWA Section 304(a). The State Water Board has adopted some of the proposed criteria as water quality objectives through the Ocean Plan. The Regional Water Boards also adopt water quality objectives in regional water quality control plans pursuant to Porter-

Cologne. After approval by U.S. EPA, these objectives, together with beneficial uses and the Anti-Degradation Policy, constitute water quality standards pursuant to the CWA.

2. ~~NOAA-MBNMS~~ will consult with the State Water Board and the Regional Water Boards to recommend objectives in addition to those already promulgated by the State Water Board and Regional Water Boards to protect MBNMS resources and qualities and compatible uses.
3. Any water quality criteria guidance developed for ~~the MBNMS~~~~MBNMS~~ will take into account the purposes of the MPRSA.

VII. INTER-AGENCY PERMIT AND PLAN REVIEW PROCEDURES

- A. ~~NOAA~~~~MBNMS~~ and the Regional Water Boards agree to coordinate the Regional Water Boards' permit development and issuance procedures with ~~NOAA~~~~MBNMS~~'s procedures to review, comment on, and if applicable, object to, or propose conditions to, the State's permit.
- B. General
 1. The Parties agree that a collaborative review process for permit applications and plans is the best way to avoid unnecessary delays in making decisions on permit applications and to ensure resource protection.
 2. During this process, ~~NOAA~~~~MBNMS~~ will provide a reasonable basis for any objections or permit terms and conditions recommendations, based on evidence of: significant threat of injury to MBNMS resources or qualities, compliance with applicable criteria, or effects on other compatible uses of ~~the MBNMS~~~~MBNMS~~.
 3. Regional Water Board and ~~NOAA~~~~MBNMS~~ staff will work to resolve conflicts through discussions prior to the publication of staff reports or draft permits, or, if necessary, during the scheduled public comment period. If conflicts are not resolved prior to or during the comment period, the Regional Water Board may take action on the permit or plan. The effective date of permits not consistent with all of ~~NOAA~~~~MBNMS~~'s comments will be no earlier than 45 days from the date the Regional Water Board adopts the permit, or as otherwise required by law. If ~~NOAA~~~~MBNMS~~ has objections following Regional Water Board adoption of the permit or plan, ~~NOAA~~~~MBNMS~~ may appeal the decision, in accordance with the process for elevation outlined in Section VII.G of this Agreement.

C. Scope

1. These procedures are established for new and renewal or revised permit applications including:
 - a. NPDES permits issued under Section 13377 of the Water Code;
 - b. WDRs issued under Section 13263 of the Water Code;
 - c. Enrollments of municipalities under the NPDES General Permit NO. CAS000004 (Storm Water Discharges from Small Municipal Separate Storm Sewer Systems);
 - d. Enrollments of aquaculture and desalination facilities under the NPDES General Permit for Discharges with Low Threat to Water Quality (Order NO. 01-119);

Comment [AT5]: LM: Ag order?
TA: Waivers? 401 certs?

Comment [b6]: To my knowledge, these are permits that MBNMS might authorize. We wouldn't authorize the Ag Order or 401 certs.

Comment [b7]: Desal is not allowed under the Low Threat permit per an existing agreement with Region 3.

D. New Permits

The Regional Water Boards will notify and forward to NOAA-MBNMS all new permit applications identified in the geographic scope described in Section IV of this Agreement.

E. Renewed or Revised Permits

Prior to July 1 of each year, the Regional Water Boards will submit to NOAA-MBNMS a comprehensive list of permits, within the geographic scope (Section IV of this Agreement), scheduled for renewal or revision in the following twelve month period. NOAA-MBNMS staff will examine this list and provide the Regional Water Boards a list of renewal/revision permit applications to be forwarded to NOAA-MBNMS, according to the permit review procedure described in Section VII.F.1-5 of this Agreement.

Comment [b8]: While I do track Lyris, if possible we would like to know in advance which permits are coming up for renewal. I'd like to leave this in the document.

Comment [AT9]: NF: Something we don't do at the present. B. Hoover says they are on our Lyris list and track our activities and this list isn't necessarily required.

F. Permit Review Procedure

1. New and complete permit applications within the geographic scope described in Section IV of this Agreement and revised or renewal permit applications requested per Section VII.E of this Agreement will be sent to NOAA-MBNMS within 15 days of the Regional Water Board's receipt of the application. No additional applications will be required by

NOAAMBNMS. However, NOAA-MBNMS may request the Regional Water Boards to obtain additional information from the applicants, in accordance with State law. Within 45 days of receipt of applications, NOAA-MBNMS shall conduct oral discussions or provide written comment to Regional Water Board staff. NOAA's-MBNMS failure to provide comments during this period shall not require the Regional Water Boards to delay issuance of draft permits.

2. After considering all written comments provided by NOAAMBNMS, the Regional Water Boards will prepare or revise draft permits to address those comments and all criteria the Regional Water Board determines to be consistent with Porter-Cologne and the CWA (e.g., State Ocean Plan, Basin Plans, Federal regulations), any NPDES agreement between the U.S. EPA and the State Water Board, and NOAAMBNMS's WQPP Action Plans. The Board will e-mail the draft permits and, if applicable, Fact Sheets at least 45 days before scheduled adoption of the draft permit by the Regional Board. If, at this point, NOAAMBNMS believes its concerns have not been adequately addressed, it will submit those comments in writing to the Regional Water Board during the public comment period.
3. The Regional Water Board will consider all comments provided by NOAAMBNMS either by modifying the proposed permit accordingly or by preparing a written response to NOAAMBNMS about each comment not accommodated. If the Regional Board adopts a permit that is consistent with all of NOAAMBNMS's comments, the permit will be effective upon the effective date set forth in the permit. If the Regional Board adopts a permit that is not consistent with all of NOAAMBNMS's comments, the effective date of the permit will be no earlier than 45 days from the date the Regional Board adopts the permit, or as otherwise provided by law in order to provide enough time to either reconcile differences or initiate the Referral Process in Section VII.G. of this agreement. Valid permits that are consistent with all of NOAAMBNMS's comments will be deemed by NOAAMBNMS, through notification to the Regional Water Board, to have met such paragraph (a) of 15 C.F.R. 922.49. Valid permits that are not consistent with all of NOAAMBNMS's comments will be deemed by NOAAMBNMS to have met such paragraph (a) on an interim basis as of their effective date. After conducting the Procedures for Referral as described in Section VII(E) of this Agreement, these permits will be deemed by NOAAMBNMS to have met paragraph (a) of 15 C.F.R. 922.49. Such notification shall be sent by NOAAMBNMS to the Regional Water Board within 10 working days following NOAAMBNMS's receipt of written notice of the action by the Regional

Comment [AT10]: This is the second time I've seen this in here. As I read this, if a permit goes into effect the date of the Board meeting, then this agreement does not have any effect on it. I don't really understand the intent of saying "no earlier than 45 days..." Is this intended for permits where we have flexibility about when the permit goes into effect? Is this meant to toll the petition timing? Let's chat about this and the similar provision above.

Comment [b11]: Hopefully this added language clarifies the reason to have the 45 day window.

Water Board or State Water Board, as appropriate. If ~~NOAA-MBNMS~~ fails to act within this time period, the subject permit shall be deemed to have met such paragraph (a).

4. Notwithstanding Section VII.F.3 of this Agreement, no new, revised, or renewed permit allowing (i) the disposal of dredged material within ~~the MBNMS~~ other than at sites designated as of the effective date of Sanctuary designation or (ii) the discharge of primary-treated sewage within ~~the MBNMS~~, shall be deemed by ~~NOAA-MBNMS~~ to have met 15 CFR 922.49(a).
5. ~~With regard~~ to the combined sewer overflow component ~~of~~ the City and County of San Francisco's sewage treatment program, as approved by the San Francisco Bay Water Board and U.S. EPA, ~~a buffer zone~~ has been created ~~in the regulations for MBNMS(15 CFR 922.130)~~ encompassing the anticipated discharge plume to protect MBNMS resources and qualities from the discharge. The Parties to this Agreement agree that the NMSA and its implementing regulations do not apply to the buffer zone. The buffer zone extends from Point San Pedro (37° 35' 39.95771" N latitude, 122° 31' 11.04331" W longitude); to 37° 36' 59.4490" N latitude, 122° 36' 56.2934" W longitude; to 37° 46' 01.2422" N latitude, 122° 38' 56.4737" W longitude; to Point Bonita (37° 49' 05.94811" N latitude, 122° 31' 42.39811" W longitude). The shoreward boundary of the buffer zone extends from Point San Pedro north along the coast following the mean high tide line to Point Lobos and thence in a straight line to Point Bonita.

Comment [b12]: EPA comment – “what does this ? require? Is it consistent with our permit?”

Comment [MM13]: Checking on this and should have an answer before final draft

Comment [AT14]: The SFPUC permit is currently up for reissuance. I am running this by R2 NPDES staff to ensure it is consistent.

G. Procedures for Referral

1. General

In most cases, the concerns of the different Parties will be addressed at the initial decision-making levels ~~of agency staff and managers~~. If concerns remain unresolved, the dispute could be referred to higher-level officials within each agency for resolution, according to the following process available to ~~NOAA-MBNMS~~.

a. Process for elevation

- i. If the Regional Water Board permit does not, in the opinion of ~~NOAA-MBNMS~~, adequately act to relieve the threat of or actual injury to ~~the MBNMS~~ (i.e., threat of or actual significant injury is still occurring and ~~an~~

NOS Agreement Code: MOA-20~~15-XXX/xxxx06-075/7274~~

~~NOAAMBNMS~~-approved (in consultation with U.S. EPA) action plan to adequately reduce or eliminate such injury or threat is not underway), ~~NOAAMBNMS~~ may file a petition with the State Water Board within 30 days of the Regional Water Board action (~~ref:see Cal. Water Code §Section 13320-of the California Water Code~~). The State Water Board will act to confirm (which may include dismissing the petition), amend, or overturn the decision of the Regional Water Board, in accordance with ~~S~~sections 13320-13321 of the California Water Code.

- ii. If, after the State Water Board takes final action on the petition, ~~NOAAMBNMS~~ believes the State Water Board has not adequately acted (i.e., ~~NOAAMBNMS~~ believes the threat of or actual significant injury to the Sanctuary is still occurring and an ~~NOAAMBNMS~~-approved (in consultation with U.S. EPA) action plan to adequately reduce or eliminate such injury or threat is not underway), ~~NOAAMBNMS~~ may file an appeal with ~~the MBNMS~~ Joint Review Board (JRB) within 30 days of the State Water Board's action. The JRB shall consist of the Administrator of NOAA (or designee) and the Secretary of ~~California-Cal~~/EPA (or designee).
- iii. After considering information received from ~~NOAAMBNMS~~, the State Water Board, the Regional Water Board, other public agencies, and the public, the JRB will recommend to the State Water Board to confirm, amend, or overturn the State Water Board's decision. The JRB will make such recommendation within 30 days of receipt of the appeal.
- iv. Within 60 days of receipt of the JRB decision, the State Water Board will act to confirm, amend, or overturn its decision. This paragraph shall not apply if reconsideration is prohibited by law (~~s~~See, e.g., 40 C.F.R. §122.62).
- v. These procedures do not modify the limitations period for ~~NOAAMBNMS~~ to challenge a Regional Water Board or State Water Board action under California Water Code ~~S~~section 13330.

H. Consistency Review Procedures

The CCC will conduct its consistency review of Federal projects and Federally-licensed and permitted projects in accordance with its authority as noted in Section III.D of this Agreement. Federal consistency review by the CCC is triggered by a proposed Federal activity (consistency determination) or a proposed activity that requires a Federal permit or other approval (consistency certification). The process is open to the public and anyone (including the WQPP) can comment on the triggering activity and/or CCC recommendation, and anyone (or any agency or group) can participate in any public hearing that may be scheduled.

VIII. FUNDING, PROGRAMMING, PAYMENT, AND REIMBURSEMENT ARRANGEMENTS

This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or transfer of funds among the Parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures. Such activities will be documented in separate amendments to this Agreement.

VIII.IX. CONTACTS

A. The points of contact for activities under this Agreement are:

<u>MBNMS</u> Bridget Hoover, WQPP Director 299 Foam Street <u>99 Pacific St. Bldg 455</u> 43 Monterey, California 93940 831.647.4217 (p) 831.647.4250 (f) bridget.hoover@noaa.gov	<u>U.S. EPA</u> Sam Ziegler 75 Hawthorne Street, Mail Code WTR- San Francisco, California 94105-3901 415.972.3399 (p) 415.947.3537 (f) ziegler.sam@epa.gov <u>Ziegler.Sam@epa.gov</u>
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<u>California Cal/EPA</u> Cindy Tuck 1001 I Street Sacramento, California 95814 916.322.1769 (p) ctuck@calepa.ca.gov @waterboards.ca.gov	<u>State Water Board</u> Frances McChesney <u>Tamarin Austin</u> Office of Chief Counsel 1001 I Street, PO Box 100 Sacramento, California 95812 916.341.5174 (p) 916.341.5199 (f) taustin@waterboards.ca.gov <u>fmechesney</u>
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<u>Central Coast Water Board</u> Harvey Packard 895 Aerovista Place, Suite 101 San Luis Obispo, California 93401-7906 805.542.4639 (p) 805.788.3558 (f) hpackard@waterboards.ca.gov	<u>San Francisco Bay Water Board</u> Wilfried K. Bruhns <u>Naomi Feger</u> 1515 Clay Street, Suite 1400 Oakland, California 94612 510.622.2327 (p) 510.622.2460 (f) wbruhns <u>nfeger@waterboards.ca.gov</u>
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<u>CCC</u> Ross Clark <u>Tamara Doan</u> 725 Front Street, Suite 300 Santa Cruz, California 95060-4508 831.427.4873 (p) 831.427.4877 (f) relark@coastal.ca.gov <u>tcdoan@coastal.ca.gov</u> info@ambag.org	<u>AMBAG</u> Maura Twomey <u>John Doughty</u> 445 Reservation Road Marina, California 93933 831.883.3750 (p) 831.883.3755 (f) <u>mtwomey@ambag.org</u>
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- B. The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Parties in writing of such change. [A change to this section will not require an amendment.](#)

~~IX.X.~~ **DURATION OF AGREEMENT, AMENDMENTS, AND TERMINATION**

- A. This Agreement shall become effective on the date of the last signature of the Parties, and shall expire on May 1, ~~2015~~2020, unless terminated by (1) written mutual consent, (2) one Party's written notice 90 days in advance, or (3) completion of the Terms and Conditions of the Agreement.
- B. The Agreement may be amended within its scope or extended prior to expiration through the written mutual consent of the Parties. NOAA will publish a Notice of Availability of Documents in the Federal Register for any amendment to this Agreement.
- C. An individual signatory agency may withdraw from this Agreement only if the Procedures for Referral in Section VII.G of this Agreement have been exhausted on at least one occasion and the resolution of the subject dispute is not acceptable to the withdrawing Party. Upon notice that a Party is considering withdrawing, NOAA shall publish a notice in the Federal Register stating the reasons for withdrawal and soliciting public comments.

~~X.XI.~~ **OTHER PROVISIONS**

- A. Nothing in this Agreement is intended to conflict with ~~or supercede~~ applicable laws or current DOC, NOAA, NOS, U.S. EPA, ~~California Cal/EPA~~, State Water Board, Central Coast Water Board, San Francisco Bay Water Board, CCC, or AMBAG directives. Any such conflicting term shall be invalid, but the remainder of the Agreement shall remain in effect. If a term is deemed invalid, the Parties shall immediately review the Agreement to decide what they should do in light of the invalid term, e.g., amend or terminate the Agreement.
- B. If the Parties disagree over how to interpret this Agreement, they shall present their differences to each other in writing, and they shall discuss them. If the Parties fail to resolve their differences within thirty (30) days, they may refer the matter to higher level of authority within their respective organizations.
- C. This Memorandum of Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the parties, their officers or employees, or any other person.

-This Memorandum of Agreement does not direct or apply to any person other than the Parties.

- D. As required by the Antideficiency Act, 31 U.S.C. Sections 1341 and 1342, all commitments made by federal agencies in this Memorandum of Agreement are subject to the availability of appropriated funds. Nothing in this Memorandum of Agreement, in and of itself, obligates federal agencies to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with agency budget priorities. The nonfederal signatories to this Memorandum of Agreement agree not to submit a claim for compensation for services rendered to any federal agency in connection with any activities it carries out in furtherance of this Memorandum of Agreement. This Memorandum of Agreement does not exempt the nonfederal parties from federal policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this Memorandum of Agreement will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

The obligations under this Memorandum of Agreement of the State of California or its political subdivision are subject to the availability of appropriated funds.

-No liability shall accrue to the State of California or its political subdivision for failure to perform any obligation under this Memorandum of Agreement in the event that funds are not appropriated.

~~XI~~.XII. RIGHTS OF APPEAL OR PETITION

This Agreement is not intended to limit any rights of appeal or petition of any signatory to this Agreement existing under applicable Federal or California statute or regulation.

~~XII~~.XIII. APPROVALS

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

ACCEPTED AND APPROVED FOR THE
U.S. ENVIRONMENTAL PROTECTION
AGENCY

BY: _____ BY: _____

NOS Agreement Code: MOA-2015-XXX/xxxx06-075/7274

Daniel J. Basta, Director _____ Jane Diamond, Director Water Div.
Office of National Marine Sanctuaries _____ US EPA

DATE: _____ DATE: _____

[Signatures continued on next page](#)

NOS Agreement Code: MOA-20~~15-XXX/xxxx06-075/7274~~

ACCEPTED AND APPROVED FOR THE
STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION
AGENCY

ACCEPTED AND APPROVED FOR THE
STATE OF CALIFORNIA
STATE WATER BOARD

BY: _____

BY: _____

Gordon Burns, Undersecretary
CalEPA

Tom Howard, Executive Director
SWRCB

DATE: _____

DATE: _____

ACCEPTED AND APPROVED FOR THE
CALIFORNIA REGIONAL WATER
QUALITY-CONTROL BOARD
CENTRAL COAST REGION

ACCEPTED AND APPROVED FOR THE
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

BY: _____

BY: _____

Ken Harris, Executive Officer
CCRWQCB

Bruce Wolfe, Executive Officer
SFRWQCB

DATE: _____

DATE: _____

ACCEPTED AND APPROVED FOR THE
CALIFORNIA COASTAL COMMISSION

ACCEPTED AND APPROVED FOR THE
ASSOCIATION OF MONTEREY BAY
AREA GOVERNMENT

BY: _____

BY: _____

Charles Lester, Executive Director
CCC

Maura Twomey, Executive Director
AMBAG

NOS Agreement Code: MOA-2015-XXX/xxxx06-075/7274

DATE: _____

DATE: _____