



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Ecosystem Conservation Division/Water Branch
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



April 22, 2013

Cindy Messer, Delta Plan Program Manager
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Subject: Modified Proposed Rulemaking Documents

Dear Ms. Messer:

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to review and comment on the Modified Text of Proposed Regulation, dated April 4, 2013, through which the policies of the Delta Plan will become enforceable state regulations. CDFW recognizes the profound challenges associated with managing the Delta to achieve the co-equal goals of protecting, restoring, and enhancing the ecosystem and providing a more reliable water supply for California, as mandated by the Sacramento-San Joaquin Delta Reform Act of 2009. As a Trustee Agency, a potentially Responsible Agency, and the State implementing agency for the Ecosystem Restoration Program, CDFW is committed to playing an active role in the effort to achieve the coequal goals. We are providing specific comments concerning the modified text of the proposed regulations.

For reasons summarized below, CDFW recommends revising section 5009 of the proposed regulation as follows:

§ 5009. Avoid Introductions of and Minimize Habitat Improvements that Increase Habitat Suitability for Invasive Nonnative Invasive Species.

(a) The potential for new introductions of, or habitat improvements that enhance survival and abundance of improved habitat conditions for, nonnative invasive species, striped bass, or bass must be fully considered and avoided or minimized mitigated in a way that appropriately protects the ecosystem.

(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that has the reasonable probability of introducing, or improving habitat conditions for, nonnative invasive species.

With respect to the title of section 5009, CDFW suggests moving “Invasive” to follow “Nonnative”, in order to make the terminology (nonnative invasive species) consistent with the definition provided in the modified text (§ 5001(v)), as well as subsections (a) and (b) of this section (5009). In addition, CDFW suggests inserting “minimize” prior to

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“habitat improvements” in the title of section 5009 and following “avoided” in subsection (a), given that avoidance of habitat improvements which enhance survival and abundance of nonnative invasive species may not be practicable/feasible during implementation of restoration actions designed to benefit native species. We recommend deleting the reference to “mitigation” in the section title and text because it is unclear what might constitute successful mitigation, and it is also unclear what level of mitigation would be sufficient. We propose clarifying language in the section title and text of subsection (b) to indicate that the habitat improvements proposed should avoid enhancing habitat for invasive species. Careful consideration of design elements that minimize the potential establishment and proliferation of nonnative invasive species and promote habitat resiliency to changes in future Delta conditions is of critical importance to restoration planning.

Finally, CDFW suggests that the title page for Appendix 3 be revised to read “Excerpt from the Ecosystem Restoration Program’s Draft Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone (CDFW 2011): Section II. Habitats.” Such an approach would more explicitly describe the content of the appendix and would be consistent with the reference used in section 5006 of the modified text and Appendix H of the Final Draft Delta Plan.

If you have any questions or require clarification regarding our comments, please contact David S. Zezulak, Ph.D., at (916) 445-3690 or Dave.Zezulak@wildlife.ca.gov

Sincerely,



Scott Cantrell
Chief, Water Branch

cc: California Department of Fish and Wildlife

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