State of California -The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
1416 9th Street
Sacramento, CA 95814
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

September 29, 2011

Mr. Joe Grindstaff
Executive Officer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Subject: Fifth Staff Draft Delta Plan

Dear Mr. Grindstaff:

The Department of Fish and Game (DFG) appreciates the opportunity to review and comment on the Delta Stewardship Council's Fifth Staff Draft Delta Plan (Delta Plan).

DFG recognizes the profound challenges associated with managing the Delta to achieve the co-equal goals of ecosystem protection and water supply reliability as mandated by the Sacramento-San Joaquin Delta Reform Act of 2009. DFG appreciates the tremendous commitment of resources you and your staff have put into developing this important plan. DFG is also committed to fulfilling its ongoing role as the State implementing agency for the Ecosystem Restoration Program to help achieve the ecosystem goals of the Delta Plan. DFG, as a member agency of the Interagency Ecological Program, is also committed to providing the DSC with monitoring data and scientific information that will inform the adaptive management decision-making process during implementation of the Delta Plan.

DFG believes the Fifth Staff Draft Delta Plan has improved a great deal compared to earlier drafts. We are providing you with some specific comments in an attached table we believe will be useful. If you have any questions or require clarification of our comments, please contact Mr. Dave Zezulak at (916) 445-3960.

Sincerely,

Charlton H. Bonham
Director

Attachment

ec: Department of Fish and Game
Mr. Scott Cantrell, Acting Chief, Water Branch, scantrel@dfg.ca.gov
Mr. David S. Zezulak, Ph.D., Water Branch, dzezulak@dfg.ca.gov
Mr. Chad Dibble, Water Branch, cdibble@dfg.ca.gov

Comment Number	Chapter	Page	Line	Comment
1	Entire Plan	n/a	n/a	As recommended by the Independent Science Board (Delta Plan, App. E, Delta ISB Memo), the Delta Plan should more explicitly incorporate the use of the Delta Regional Ecosystem Implementation Plan (DRERIP) conceptual models.
2	Preface	3	13	Although this statement is generally correct, Public Trust, fish passage, and fishing Rights have been recognized since statehood - see Bork et al 2011. "The Rebirth of Cal. Fish & Game Code 5937: Water for Fish." Working draft available at http://watershed.ucdavis.edu/library.html. The text should be strengthened to reflect the concept that fish and public trust values have always been a part of the California legal framework.
3	Preface	5	1-20	Overall, the information presented in this section does not address problems, symptoms or causes.
4	Preface	6	31	Recommend adding a paragraph that points out how reducing risk can sometimes be integrated with habitat restoration to achieve goals concurrently (e.g. flood control efforts can be coordinated with floodplain habitat restoration), recognizing that this comment is addressed more fully later in the document.
5	Preface	9	26	One issue that could be mentioned at this point is that sea level rise is not necessarily gradual, especially along the California coast. See Cayan et al. 2008 "Climate change projections of sea level extremes along the California coast" for more on this.
6	1	14	25	Insert the word 'in' after the word 'actions' in the last sentence.
7	1	15	38-39	The last sentence of paragraph, "Many of our previous attempts....." Change 'our' to 'the'.
8	1	17	4	Add information that describes how large-scale water projects and habitat changes have created a poor environment for native fish.
9		17	20	Add a description of fish population trends since 1992. It is also important to describe the Pelagic Organism Decline.
10	1	17	12	The Bay-Delta Watershed is not one of the "least-understood aquatic ecosystems". On the contrary, on page 22 of the 2008 State of the Science report, Healy states, "indeed, the Bay-Delta is one of the most thoroughly studied estuaries in North America and benefits from a strong infrastructure of public, private and academic research capacity." Although our knowledge of the ecosystem is not perfect, we understand quite a bit. Other work that Healy and others have done, do support the idea that the Bay-Delta is a complex system that will continually surprise us, which is inherent in complex systems. (See Healey's "Science in Policy Development for the Bay-Delta" within the State of Science report for a discussion of this.)
11	1	17	41	Another potential impact of climate change, which has already been seen in the Sierras, is that wildfires intensities are expected to increase, resulting in sedimentation impacts to surface storage facilities and a reduction in infiltration rates that could lead to higher peak runoff.
12	1	21	18	This section should describe that the State responsibility for ERP implementation now resides with DFG which is implemented with the cooperation of USFWS and NMFS.
13	1	21	32	Include reference to state and federal agencies also working on restoration, e.g. DFG
14	1	23	8	Need to recognize terrestrial species, i.e., wildlife and natural communities
15	1	23	28-30	If the range is 100-200 MAF, how is the average over the last century 200 MAF?

Comment Number	Chapter	Page	Line	Comment
16	1	23	38	Suggest an added sentence at 38: "*This management of the system has resulted in a reduced resiliency of the Delta's ecosystem, which evolved with and depends on inter- and intra-annual variations in flows.*"
17	1	23	9	Suggest: "Reduc*tion and altered timing of* freshwater flows into the Delta"
18	2	44	7	Reword as follows, "...if the results show that the action is doing more harm than good *or the anticipated benefit is not noted within the allotted time frame*".
19	2	47	6	Suggest rewording as follows, "Support ~~the best and brightest~~ *sound science and research* through the competitive grant programs."
20	2	47	7	Suggest deleting this bullet: ~~Invest in young scientists and researchers~~
21	2	48	29	The Department and the ERP Conservation Strategy should be listed among the "others" working to develop Delta Science Plan.
22	3	58	21	Recommend adding a (partial) administrative exemption for NCCPs. A key factor drawing plan participants to NCCPs is that they can receive "assurances" that they will only be "on the hook" for a defined amount of restoration/mitigation/conservation measures in exchange for agreeing to commit to a higher standard for the species (conservation). If plan participants were aware that they could be subject to more requirements from the DSC, they may not be as inclined to participate in NCCPs. Important to note also, that NCCPs all have adaptive management components (required in statute). Therefore, recommend "covered action" excludes, for the purposes of the Delta ecosystem restoration policies of the Delta Plan only, landscape level, multi-species Habitat Conservation Plans (HCPs) and/or Natural Community Conservation Plans (NCCPs) developed by local governments in the Delta. Additionally, no measure taken to implement the conservation strategy of the HCP or NCCP shall be considered a "covered action" for the purposes of the Delta ecosystem restoration policies of the Delta Plan. Updates to the Delta Plan shall not trigger mandatory updates to a permitted HCP/NCCP."
23	3	60	27	Recommend clarifying where short-form consistency process applies. The term is never mentioned again. It appears that it refers to process for incorporating another plan into the Delta Plan.
24	3	60	41	Recommend clarifying whether or not the requirement is to disclose all feasible mitigations, or only those mitigations that will be implemented.
25	3	61	10	Recommend clarifying whether or not amendment of the Delta Plan requires project proponents to file new consistency determinations (if they already did pursuant to the original Delta Plan).
26	3	62	22	Recommend removal of last sentence in this section. DSC is required to incorporate BDCP if certain requirements are met. Appellate authority is limited to approval of plan as a whole. It is outside of DSC's discretion to determine that covered actions are not consistent with the BDCP.
27	4	89	35	Recommend adding to end of sentence: ...flood control *or instream flow requirements for aquatic species.*
28	5	110	34-38	The DSC should note that a dynamic system undergoes continuous disturbances and that recovery from small scale disturbances increases resiliency to larger scale events (as discussed by Folk et al. 2004 which is already referenced in the paragraph). This is an underlying principle than supports "the natural flow regime".
29	5	112	8	Add text on importance of flood plain inundation and juvenile rearing habitat.

Comment Number	Chapter	Page	Line	Comment
30	5	112	9	Suggest adding reference to Fish and Game Code 5937.
31	5	112	14	Suggest deleting "Nonflow changes like" and leave the remainder of the sentence.
32	5	112	25	This is a poorly worded sentence and should be reworded; river channels do not run "backwards".
33	5	112	32	This discussion could be used to highlight a case where focus could be shifted from treating symptoms to treating problems. Stock supplementation practices will often release hatchery raised fish lower in the Delta to avoid emigration losses, but this practice also tends to result in more straying and other impacts to the returning fish later in their life cycle.
34	5	112	37	This "problem statement" is limited and does not reflect the discussion above or the policies below. Suggest rewrite to read, "Altered Delta flow regimes are detrimental to native species, their habitats, and the resiliency of the Delta ecosystem while encouraging non-native species and exacerbating many other stressors."
35	5	115	7	Recommend adding discussion on the need to restore the ecosystem's ability to create and maintain habitat diversity. The restoration of tidal wetlands and flood plain following current "best practices", allows for the system to continuously change. This concept is very important in creating a resilient system.
36	5	117	21	It was not the intent in the ERP Conservation Strategy to use the elevation map (Figure 5-2) to dictate where restoration of specific habitat types must occur. The map presents current elevation bands within which certain restoration activities would be appropriate and should be prioritized. It is not recommended that all "subtidal" elevations be converted to aquatic habitat, and likewise, it is not intended that all intertidal elevation be restored to intertidal marsh habitat. In addition, there may be areas that are currently within the subtidal elevation band that may be appropriate to consider for intertidal habitat restoration with the addition of dredge materials or use of subsidence reversal techniques to build up organic materials and facilitate sediment deposition. Therefore, we recommend changing the title of Figure 5-2 to something like "Current Elevations to Guide Habitat Restoration in the Delta and Suisun Marsh" Accordingly, we recommend changing the language in Policy ER P2 "*shall be consistent with the habitat type locations shown on the elevation map*" to be less restrictive and more flexible. It could read instead something like: "*Habitat restoration actions shall be consistent with the* ***appropriate elevations*** *shown on the current elevation map in Figure 5-2 ...* OR ***proposals shall provide sufficient scientific rationale for habitat restoration at alternative elevations"***

Comment Number	Chapter	Page	Line	Comment
37	5	119	35	We recommend changing the text to read as follows: Suisun Marsh. The largest wetland area on the west coast of the contiguous United States, Suisun Marsh has been mostly disconnected from the estuary. Restoring significant portions of Suisun Marsh provides the brackish portion of the estuary with sea level rise accommodation space, opportunities for extensive land-water interface dynamics, and chemical and biological gradients that support productive and complex food webs to which native species are adapted. The Suisun Marsh Habitat Management, Preservation, and Restoration Plan (Plan) has been developed by the Department of Fish and Game, Department of Water Resources, Bureau of Reclamation, U. S. Fish and Wildlife Service and Suisun Resource Conservation District, the organizations with primary responsibility for the management of the Suisun Marsh. The Plan is intended to provide regulatory certainty for managed wetland managers while facilitating tidal wetland restoration in the Marsh. The Plan when approved should be used to guide habitat restoration and management in the Marsh. A recently completed tidal restoration project is the Department of Water Resources' Blacklock Restoration Project. Projects in the planning stage include the Department of Fish and Game's Hill Slough Restoration Project and the Solano Land Trust's project at Rush Ranch.
38	5	120	4	"The current operation of the Yolo Bypass as a flood control project provides substantial ecosystem benefits for Sacramento splittail spawning and rearing and salmon rearing (Sommer et al. 2001, Moyle et al. 2007)." This comment has been taken out of context from the author. The operation of the Fremont Weir as a flood control project has caused major problems for native fish species. Furthermore, not all natural spill events over the Fremont Weir are beneficial to salmonids (DFG and NOAA have stated this publicly). Short duration spill events provided limited if any benefit to salmonids and lead to significant stranding.
39	5	120	6	*"Enhancing the ability of Yolo Bypass to be "activated" by higher-frequency, lower-magnitude flood levels provides more opportunity for migrating fish, especially Chinook salmon, to use this system as a migration corridor rich in refugia and food resources."* The Yolo Bypass is not a natural migratory corridor. The statement should state that salmonids could use the Yolo Bypass as an alternate migratory corridor. Current planning states that notching the Fremont Weir would "increase the availability of floodplain habitat for salmonids and splittail," use a similar statement in this document for consistency.
40	5	120	9	*"Projects in the planning stage include fish passage improvements, and various approaches, such as notching the Fremont Weir, to increase the frequency and duration of inundation during times of year critical for spawning and rearing of native fish."* Projects in the planning stage include but are not limited to reducing stranding and straying of native fish species, improving upstream and downstream fish passage, and increasing the availability of floodplain habitat for salmonids and splittail.
41	5	121	24-26	ER R3 has been completed, and we suggest that it be removed or reworded. *Memorandum of Agreement Regarding the Early Implementation of Habitat Projects for the Central Valley Project and State Water Project Coordinated Operations and the Bay Delta Conservation Plan* has been signed and is available here:http://baydeltaconservationplan.com/Libraries/News/MOA_Habitat_Crediting_Sept_2011.sflb.ashx

Comment Number	Chapter	Page	Line	Comment
42	5	122	13	This recommendation on "Anticipated stressors" should have a discussion of the prospect for ecological thresholds and feedback mechanisms. See Groffman et al 2006 "Ecological Thresholds: The Key to Successful Environmental Management or an Important Concept with No Practical Application?"
43	5	123	1	Stage 2 Actions for Non-Native Invasive Species table will need to be updated to replace the formatting errors (numbering).
44	5	126	41	The proper citation is "Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions (DFG 2011)."
45	56	122	16	Add "non-native invasive species" to "Current stressors" list. Without increased outreach/education and regulation change/enforcement, humans will continue to introduce new invasive species into the Delta ecosystem intentionally via aquarium dumping and other means, introduction of food species (snails, clams, fish, etc), and unintentional release via overflow from water gardens, improper disposal of bait, etc.
46	6	133	4	The term "impaired water quality" does not really have meaning. With CWA, discussion is on water quality limited segments, water quality not meeting standards (or exceedances), or water bodies or beneficial uses being called impaired. Recommend changing this term, perhaps use "Water quality impairments or water quality degradation" or just rewriting that first sentence.
47	6	133	4	Reword as follows, "Impaired water quality is *a* ~~an influential~~ stressor contributing…"
48	6	133	24-25	Reword as follows, "At all times the Delta should be free of ~~toxic~~ substances that exceed *levels that are found to be* toxic. "
49	6	134	16-28	Water quality terms are confused. Porter-Cologne (State) provides for development of Basin Plans that designate beneficial uses, water quality objectives, and implementation plans. CWA (federal) requires beneficial uses and water quality criteria make up the water quality standard. It also includes the State's antidegradation policy. The difference is the requirement of implementation plans. Recommend re-writing to correct and make clearer.
50	6	134	29	Rewrite sources of pollution sentence so someone unfamiliar with point and nonpoint sources can clearly understand what a point source is and what nonpoint source is.
51	6	134	29-30	To be consistent with other text, add legacy organic pollutants to the list as a point source.
52	6	134-135	40	Transition to TMDL discussion needs work.
53	6	136	3	Update discussion as comment period for ANPR is past.
54	6	136	16	Mentions the Clean Water Act, and then California statutes for Porter Cologne are given as the citation. Recommend addition appropriate Federal statues and addition Porter-Cologne. New sentence: The SWRCB and RWQCBs are the regulatory agencies with statutory authority to adopt water quality control plans (Water Code Section 13420). This authority is supported by the Federal Clean Water Act (33 U.S.C. §1251 et seq.)
55	6	136	24	Rewrite sentence to read; "This chapter discusses three major water quality topics that create significant concerns in protection of human health and improved environmental conditions in the Delta and regions receiving exported water…."

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56	6	138	16	Add to the end of the sentence that reverse flows can potentially impair migratory movements of species that use salinity gradients for migratory cues. Also discuss the potential for fish entrainment.
57	6	144	28	Citation for DRERIP Chemical Stressors model is incorrect. The correct citation would be Werner et al. 2008 (not Werner and Oram 2008) and the following should be in the reference section: Werner I, Anderson S, Larsen K, and Oram J. 2008. Chemical stressors conceptual model. Sacramento (CA): Delta Regional Ecosystem Restoration Implementation Plan. Mention the model in the text, as the work is good, and the ISB has been supportive of the conceptual models developed through the DRERIP process.
58	6	144-145	44-6	Transport pathways of pyrethroids and the major sources are very similar. Consider rewriting this paragraph.
59	6	145		There are many references from the mercury strategy (2003). Incorporate summaries that are more recent: the DRERIP Mercury Conceptual Model (2008) or the CVRWQCB TMDL staff report (2010).
60	6	145	15	In general, the mercury section needs updating concerning the state of the science. Include more recent findings and references.
61	6	145-146	15	The section on mercury seemed to underplay the concern of methylmercury production from restoration efforts. Alpers et al. 2008 and CVRWQCB 2010 treat this subject well and are good references to consult.
62	6	145	16	The 303(d) List of Impaired Waterbodies comes from the Clean Water Act. Writing/reference is too casual (and incorrect) when referring to it as SWRCB's 303d list. May want to actually cite the publications, rather than the reference.
63	6	145	21	Update Delta methylmercury TMDL citation to the 2010 documents.
64	6	145	25-27	Use the actual sentence from CVRWQCB TMDL report as the changes made make the sentence incorrect/awkward, "The Sacramento Basin, which is comprised of the Sacramento River and Yolo Bypass tributary watersheds, contributes 80% or more of total mercury fluxing through the Delta."

Comment Number	Chapter	Page	Line	Comment
65	6	145	32-38	Use the complete paragraph from the mercury strategy. As it stands, the topic sentence is without example of adverse affects and the addition of examples of top predators is awkward. So it would read: "Concerns about mercury pollution stem largely from the potential adverse effects of dietary exposure to methylmercury, a highly toxic form that readily accumulates in biota and can biomagnify to harmful concentrations in organisms atop aquatic food webs (Mahaffey 2000, Clarkson 2002, Wiener et al. 2003). Documented consequences of methylmercury pollution include (1) direct adverse effects on the health and fitness of fish, wildlife, and humans, (2) contamination of fishery resources that diminishes their nutritional, cultural, socioeconomic, and recreational benefits, and (3) socio-cultural damage to indigenous peoples who had fished for subsistence (Mahaffey 2000, NRC Committee on Toxicological Effects of Methylmercury 2000, Wheatley and Wheatley 2000, Clarkson 2002, Wiener et al. 2003). Nearly all of the mercury in fish is methylmercury (Grieb et al. 1990, Bloom 1992), and consumption of fish is the primary modern pathway of methylmercury exposure in humans (NRC Committee on the Toxicological Effects of Methylmercury 2000, Mahaffey 2000, Clarkson 2002, Schober et al. 2003). Dietary exposure to methylmercury can be substantial for predatory fish and wildlife atop aquatic food webs (Wiener et al. 2003), and recent studies suggest that the reproductive success of some nesting aquatic birds is being adversely affected by methylmercury exposure in the Bay-Delta ecosystem (Hoffman et al. 1998, Heinz 2003, Schwarzbach and Adelsbach 2003)." Then add the sentence on health advisories.
66	6	145	39-42	Two competing processes, methylation and demethylation control the level of methylmercury in the water column. Cite Alpers et al. 2008 (the DRERIP Mercury Conceptual Model for this - see page 18, Section 3.1.3). Note that methylation does not take place in the water column, but is created in the sediment and then mixing between the two (namely the sediment pore water and the aquatic environment) brings it into the water. Currently, researchers are looking at/questioning whether methylation can be occurring on biofilms on plant material in rice fields).
67	6	145	42-45	Here is text to consider using for microbial methylation: "It is generally accepted (Ullrich et al. 2001, Munthe et al. 2007) that the methylation of mercury in aquatic environments is carried out primarily by sulfate-reducing bacteria (SRB; Gilmour et al.1992, Benoit et al. 2003), although recent reports have confirmed that some iron-reducing bacteria (IRB), which reduce iron from ferric [Fe(III)] to ferrous [Fe(II)], also can carry out this process (Fleming et al. 2006, Kerin et al. 2006). Both microbial groups are anaerobes, meaning that they are not active in strongly oxygenated environments. This is one reason that the production of MeHg most commonly occurs in anoxic (oxygen-depleted) surface sediment, and not in the water column, which generally contains dissolved oxygen in well mixed aquatic systems (e.g. rivers and the tidally flushed delta). The second reason that MeHg production largely occurs in sediments is that bacteria in general are much more concentrated in sediments than in the water column on a volumetric basis." Alpers et al. 2008

Comment Number	Chapter	Page	Line	Comment
68	6	145	42-52	"...the most important sites of microbial methylation in the Bay-Delta ecosystem are **generally** oxic-anoxic interfaces in sediments, wetlands, and seasonally inundated, vegetated habitats (St. Louis et al. 1994, Hurley et al. 1995, Kelly et al. 1997, Gilmour et al. 1998)," this is an altered quote from Wiener 2003 with a major alteration without substantiation. The original quote is ...the most important sites of microbial methylation in the Bay-Delta ecosystem **are expected to be** oxic-anoxic interfaces in sediments, wetlands, and seasonally inundated, vegetated habitats (St. Louis et al. 1994, Hurley et al. 1995, Kelly et al. 1997, Gilmour et al. 1998)."
69	6	146	10-15	Mention work by Stephenson, Heim, and others showing role of photodemethylation and sedimentation as pathways for methylmercury loss.
70	6	146	1-9	Recommend more current references and conclusions. Replace existing paragraph with: "There is general concern that increased concentrations of methylmercury in water, sediment and biota might result from restoration of wetland and floodplain habitats in the Bay-Delta and from changes in the conveyance of freshwater across the Delta. Include the following text, Alpers et al. 2008: The general association of methylmercury with wetlands is well established (e.g. Krabbenhoft et al.1999, Langer et al. 2001, Lacerda and Fitzgerald, 2001), as is the initial rise in methylmercury concentrations in newly flooded reservoirs (Kelly et al. 1997, St. Louis et al. 2004). In the Delta and its tributaries, a wide variety of habitats are present. Patterns are beginning to emerge with regard to the distribution of MeHg in water, sediment, and biota with regard to habitat in the Bay-Delta region. Episodic flooding is a characteristic that may be associated with increased MeHg exposure (Gilmour et al. 2004). There may be also an association between MeHg exposure and time of year that areas that are flooded; those flooded during relatively warm periods of the year may be areas where MeHg will be preferentially produced and bioaccumulated due to enhanced micro- and macro-biological activity during warm periods. Overall, the habitats with the highest levels of MeHg production, concentration, and exposure to biota are those with periodic flooding events separated by sufficient time to allow complete drying. Experimental removal of wetland plants in multiple wetlands also demonstrates the importance of rhizosphere activity on microbial methylation rates (Windham-Myers and Marvin-DiPasquale 2007). The habitats with relatively high of MeHg concentrations in sediments include floodplains which are typically flooded intermittently during later winter and spring, and high elevation tidal marshes which are flooded only during the highest ("spring" and "perigean") parts of the lunar-tidal cycle. Lower elevation tidal marshes that are wetted on a daily basis tend to have lower MeHg concentrations, based on observations in the Napa-Petaluma area (Yee et al. 2005, 2007). Perennially flooded habitats such as open-water zones with various types of aquatic vegetation (submerged, floating, and emergent) tend to be lower in MeHg in water and sediment than seasonally flooded habitats (Table 1). In the case of submerged and emergent vegetation, the large range in water-column MeHg concentrations is indicative of the influence of tributaries contributing high aqueous MeHg concentrations to the water column in areas such as the Cosumnes River compared with much lower concentrations of aqueous MeHg in the Central Delta (Marvin-DiPasquale et al. 2007).
71	6	150	25-26	Reword as follows, "Trends in body loads of mercury and selenium in ~~top predatory~~ *both resident and migratory* fish *species* in the Delta will be downward over the next decade."

Comment Number	Chapter	Page	Line	Comment
72	6	Entire	n/a	Mention the Porter-Cologne Water Quality Control Act in this chapter. It could work in with a new sentence beginning in the middle of line 8 such as "Key statutes regulating surface water quality are the Federal Clean Water Act (CWA) and the State Porter-Cologne Water Quality Control Act." This is especially important given its role in State water quality regulatory actions (It pre-dated CWA and gives the State significant authority absent CWA and USEPA oversight given via CWA) and given current activities on a national level to weaken the CWA.
73	6	Entire	n/a	These sections (Environmental Water Quality pollutants) could have benefited from using the DRERIP conceptual models and their respective documents. References should be made to these documents at a minimum due to the synthesis of work that was incorporated in them. DRERIP developed conceptual models for pyrethroids, dissolved oxygen, mercury, selenium. At the very least, they serve to consolidate current state of science. The Independent Science Board was very positive about these models and said the following about the models: "Because they are specific to the Delta, the DRERIP models provide a valuable resource for characterizing causal linkages between stressors and objectives and for prioritizing stressors."
74	7	161	20	There should be mention of the risk to water quality from the storage of hazardous materials on Delta Islands that are subject to flooding. Any breached levee not only pushes water onto the island, but with tidal action this water will be mixed with Delta water and could cause problems both for drinking water and for ecosystems.
75	8	n/a	n/a	Native American cultural sites need to be taken into consideration when restoration or other actions are taken in the Delta.

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Chairman Isenberg
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Comments on the Fifth Staff Draft Delta Plan

Dear Chairman Isenberg and Council:

The Department of Fish & Game (DFG) and the United States Fish & Wildlife Service (USFWS) appreciate the opportunity to jointly comment on the fifth staff draft of the Delta Plan (Delta Plan). Both agencies also plan to submit individual comments but together want to inform the Delta Stewardship Council (Council) that certain elements of the current Delta Plan as written could hinder or even prevent permitting and/or implementing Habitat Conservation Plans (HCP) and Natural Community Conservation Plans (NCCP).

Landscape level, multi-species HCPs and NCCPs are authorized and permitted pursuant to the Endangered Species Act, the California Endangered Species Act, and the Natural Community Conservation Planning Act. NCCPs and HCPs take a broad-based ecosystem approach to planning for the protection and perpetuation of biological diversity while allowing for compatible economic activity. Generally, local agencies oversee the numerous activities that compose the development of a HCP/NCCP in cooperation with landowners, environmental organizations, and other interested parties. A key factor attracting local agencies to the HCP/NCCP process, is the ability of DFG and USFWS to provide regulatory assurances. In essence, permittees agree to measures that translate to a higher level of species conservation in exchange for an assurance from the permitting agencies that additional measures will not be imposed over the term of the plan.

There are currently five Delta county HCPs and/or NCCPs approved or in the planning process that aim to provide for the conservation of at-risk species that reside in the Delta and contribute to the long-term ecological sustainability of the region. DFG and USFWS are concerned that the consistency determination process, as described in the Delta Plan, could subject local agencies preparing or implementing these plans to additional measures or requirements beyond what is contained in the plans. DFG and USFWS believe such additional measures, particularly as they relate to the ecosystem restoration goals of the Delta Plan, are unnecessary because the Delta County HCP and/or NCCPs cannot legally be approved unless they contain certain components very similar to the core principles articulated in the Delta Plan. These elements include a formal adaptive management and monitoring process informed by the best available science, an open

and transparent governance process and a guaranteed financing mechanism to ensure implementation of required measures. In addition, outcomes from the Council imposing these additional measures could frustrate the ability of the agencies to offer meaningful assurances to plan participants effectively abolishing a key incentive that encourages HCP/NCCP participation and completion. For these reasons, and in the interest of reducing duplicative regulatory oversight, DFG and USFWS request that the Council determine that activities covered under HCP/NCCPs and HCP/2081s are exempt from the ecosystem restoration policy portion of the Delta Plan

Additionally, USFWS and DFG request that the Delta Plan make clear that obtaining a consistency determination from the Council does not constitute compliance with other laws or regulations that may apply to a project such as the Endangered Species Act or Fish and Wildlife Coordination Act. Although the draft Delta Plan includes a provision in Policy G P1 (Page 61, lines 8-9) that "[a]ll covered action proponents shall certify that the covered action shall comply at all times with existing applicable law," USFWS and DFG feel that more clarification on this point is needed. Given that the Council proposes to only review and approve projects for consistency if the consistency determination is appealed, proponents may incorrectly assume they are consistent with the plan and in compliance with all applicable laws. Therefore, USFWS and DFG request that the Council include clarification that a Delta Plan consistency determination is a separate and additional requirement from other applicable laws or regulations.

A meaningful resolution of this issue is important for DFG and USFWS, local Delta agencies engaged in HCP/NCCPs and the future of HCP/NCCP planning in the Delta. DFG and USFWS look forward to working with the Council on this issue. If DFG and USFWS can assist the Council in any way, please contact DFG's Scott Cantrell, Acting Water Branch Chief at 916-445-1272 or USFWS's Mike Chotkowski, Bay Delta Fish and Wildlife Field Supervisor at 916-930-5603.

Sincerely,

Director, California Department of Fish and Game

Pacific Southwest Regional Director
U.S. Fish and Wildlife Service