

## Draft Comment Summary and Responses

Comment Deadline: May 13, 2014

Amendment to the Water Quality Control Plan for the Los Angeles Region  
to Revise a TMDL for Toxic Pollutants in Marina del Rey Harbor

### List of Commenters:

Comment Reference No.	Organization	Representative
1	County of Los Angeles	Gary Jones, Director
2	City of Los Angeles	Enrique C. Zaldivar, Director
3	Heal the Bay and Los Angeles Waterkeeper	Peter Shellenbarger, Kirsten James, Tatiana Gaur
4	General Stakeholders <sup>1</sup>	Numerous
5	Alston & Bird LLP	Maureen Gorsen on behalf of Marina del Rey Lessees Association
6	California Yacht Club	Charles Michaels
7	Individual	Steven Myles
8	Individual	Larry Silver
9	Individual	Whitney Green

### Response to Comments:

No.	Author	Comment	Response
0.1	Multiple	Many of the comments submitted in opposition to the State Water Resources Control Board's (State Water Board) approval of this amendment to Water Quality Control Plan for the Los Angeles Region to Revise a TMDL for Toxic Pollutants in Marina del Rey Harbor (Marina del Rey Toxics TMDL) were previously submitted to the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) and submitted verbatim to State Water Board without further explanation.	The State Water Board's Notice of Opportunity to Comment concerning this Basin Plan amendment accurately informs interested persons of the procedural requirements used to implement the State Water Board's regulatory programs. According to the State Water Board's CEQA Regulations (23 Cal. Code Regs. § 3779, subd. (f)): The state board, when considering approval of a regional board's adoption of an amendment to its water quality control plan or guideline, shall prescribe a comment period of not less than 30 days. The state board may refuse to accept any comments received after the noticed deadline. All comments submitted to the state board must be specifically related to the final amendment adopted by the regional board. If the regional board previously responded

<sup>1</sup> Numerous comment letters were submitted by boat owners, Marina del Rey Leasees, boatyard owners, boat paint industry representatives, other marinas, and other interested parties. These comment letters contained similar and in some cases identical comments, and therefore they have been grouped under the category "General Stakeholders" rather than repeated.

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			<p>to the comment, the commenter must explain why it believes that the regional board's response was inadequate. The commenter must include either a statement that each of the comments was timely raised before the regional board, or an explanation of why the commenter was unable to raise the specific comment before the regional board. The state board may refuse to accept any comments that do not include such a statement. The state board is not required to consider any comment that is not in compliance with this section.</p> <p>Several of the comments submitted to the State Water Board on this matter are identical to a comment submitted to the Los Angeles Water Board at the time the draft version of this regulation was under consideration by the Los Angeles Water Board. Where a commenter has merely repeated the comment submitted below, the comment does not comply with the above-quoted regulation. During its consideration, the Los Angeles Water Board received and provided written responses to all significant comments. Los Angeles Water Board's responses either indicated that changes would be made to the regulatory provisions or related documentation in view of the comment (in which case corresponding changes were made), or the Los Angeles Water Board's written responses indicated that changes would not be made, and the response indicated why not.</p> <p>The State Water Board cannot divine what the commenter believes has been adequately satisfied by the Los Angeles Water Board, nor can it determine the reason for any remaining dissatisfaction. Without that information, the State Water Board does not have a fair opportunity to understand what, if any, remaining concerns exist.</p>

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1.0	County of Los Angeles	<p>Over the last decade the County has invested over \$23 million to enhance water quality in Marina del Rey Harbor. The water quality improvement projects include:</p> <ul style="list-style-type: none"> <li>• Constructing three low-flow storm drain diversions for a total cost of approximately \$3 million</li> <li>• Relining the sewer system surrounding the Marina del Rey Harbor for a total cost of approximately \$10 million</li> <li>• Conducting scientific studies on sediment, PCBs, chlordane, metals, and bacteria for a total cost of over \$1 million</li> <li>• Constructing a water circulation system and a storm drain diversion at Mother’s Beach for a total cost of approximately \$5 million</li> <li>• Conducting water quality monitoring since 1984</li> <li>• Since 2010, conducting monitoring specifically for the TMDL at a cost of approximately \$4 million</li> </ul> <p>The County is currently implementing additional efforts to improve water quality in Marina del Rey Harbor. For example, the County is in the process of implementing the following water quality improvement projects:</p> <ul style="list-style-type: none"> <li>• Retrofitting five parking lots with bio-swales</li> <li>• Retrofitting 40 catch basins with screens and baskets to prevent trash from entering Marina del Rey Harbor</li> <li>• Reconfiguring of the Oxford Flood Control Basin, which will be completed in about 2 years, at a cost</li> </ul>	<p>The State Water Board appreciates the County’s collaborative efforts to implement Marina del Rey TMDLs and the planning, monitoring and implementation provisions of the Los Angeles County MS4 Permit. The State Water Board is committed to assisting the County with compliance and has provided funding for several of the projects listed in this comment:</p> <ul style="list-style-type: none"> <li>• The State Water Board provided \$200,000 of the total \$461,512 project cost for one of the three low flow diversions - the Boone Olive Low Flow Diversion (Grant Agreement 04-410-554, Proposition 50)</li> <li>• The State Water Board provided to \$1.88 million to fund planning for the water circulation system and storm drain diversion at Mother’s Beach (Grant Agreement 01-218-550, Proposition 13)</li> <li>• The State Water Board provided \$1 million to fund trash excluders Countywide (Grant Agreement 04-411-554, Proposition 50)</li> <li>• The State Water Board has awarded \$2 million of the total project cost of \$4.85 million to fund reconfiguring and restoration of the Oxford Flood Control Basin (Proposition 84)</li> <li>• The State Water Board provided \$218,475 to fund County watershed management planning efforts (Grant Agreement 03-203-554, Proposition 13)</li> </ul> <p>The State Water Board funded these projects after a competitive review process in which only the most worthwhile projects with the most significant water quality improvements were selected. In this way, the State Water Board ensures that</p>

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		<p>of approximately \$12 million</p> <ul style="list-style-type: none"> <li>• Developing a public outreach program regarding water quality issues in Marina del Rey Harbor to educate the boating community and other users of the Harbor</li> <li>• Developing a County Ordinance for boat cleaning activities to ensure appropriate BMP implementation during hull cleaning, because studies have shown that use of proper BMPs may reduce copper leaching from boats by up to 30 percent</li> <li>• Working with the boating community to obtain the Clean Marina designation, which is recognized by the State Department of Boating and Waterways and endorsed by the California Coastal Commission</li> <li>• Seeking grant funding to assist boaters in the transition to non-biocide hull paints</li> <li>• Initiating scientific studies to accurately assess the copper and sediment impairments</li> <li>• Developing a watershed management plan to identify control measures to reduce pollutant loading from the upstream watershed to Marina del Rey Harbor</li> <li>• Developing a coordinated water and sediment monitoring program to streamline monitoring in Marina del Rey Harbor</li> </ul> <p>The County is committed to enhancing the environment throughout Marina del Rey Harbor to implement best management practices and reasonable water quality improvements. For many years the County has</p>	<p>public funds are spent on projects and regulations that are designed in a careful and scientific manner.</p> <p>The State Water Board finds that the revised Marina del Rey Toxics TMDL is supported by science and based on careful consideration of information and data collected for the Marina del Rey Watershed and Harbor. The water quality improvements to be obtained by implementing the revised TMDL are both reasonable and required by law.</p> <p>The State Water Board finds that the action taken by the Los Angeles Water Board was not arbitrary and capricious. The Los Angeles Water Board thoroughly considered all pertinent data and scientific studies, considered the practicalities of implementation by examining similar efforts undertaken elsewhere, and responded to all timely comments submitted by interested persons. With regard to the County's comments, the State Water Board understands that staff of the Los Angeles Water Board has continued to discuss the County's concerns and requests.</p> <p>See response to specific comments included in the attachment, as follows.</p>

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		collaborated with the Los Angeles Water Board and other agencies to implement water quality projects throughout the region. However, it is important that limited public funds are spent on projects and regulations that are designed in a careful and scientific manner. While the County is aggressively implementing various actions to improve water quality in Marina del Rey Harbor, it has concerns about the proposed Basin Plan Amendment, as detailed in the attachment. The Los Angeles Water Board's failure to modify the proposed amendment in response to these concerns was arbitrary and capricious.	
1.1	County of Los Angeles	<p><b>Response to Regional Board Comment 5.1 County Recommendation:</b>                      The County requests that the TMDL compliance date for waste load allocations for lead, zinc, PCBs, chlordane, and DDTs be set to 2021 for the back basins and to 2025 for the front basins. This would allow the County to use public resources effectively by following logical steps in implementing actions necessary to address stormwater discharges to Marina del Rey Harbor.</p> <p><b>Reasons For Inadequacy Of Regional Board's Response to the County's Original Comment:</b></p> <p>As mentioned in the Regional Board's response, the County anticipates completing the parking lot retrofits for the back basins in 2017. Once those retrofits are completed, there will be the need to evaluate their effectiveness. Based on the County's experience with such BMP projects, such evaluation will require 3 to 5 years at a minimum. Furthermore, based on the results of the evaluation, there may be the need to propose additional actions to address remaining issues.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's response to this comment. The State Water Board does not agree that additional compliance time is necessary beyond the extension provided in the TMDL revision.</p> <p>As background, the original Marina del Rey Toxics TMDL became effective on March 22, 2006 and required compliance with waste load allocations in the back basins by 2016.</p> <p>The revised TMDL provides two additional years (until 2018) for MS4 permittees to meet waste load allocations in the back basins for a total implementation period of 12 years. As discussed in the Los Angeles Water Board's response to this comment, it is not apparent that any new projects in the back basins are proposed to comply with the revised TMDL. The State Water Board agrees that 12 years is sufficient time to meet the TMDL allocations in the back basins. The State Water Board disagrees that a period of three to five years is needed to evaluate BMP effectiveness prior to the final deadline for achieving the waste load allocations. The 12-year</p>

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		<p>With respect to the front basins, given that they were not in the original TMDL, retrofitting the parking lots adjacent to them was not part of the existing plans. Addressing the front basins will require retrofitting the parking lots adjacent to those basins. Sufficient time is needed to plan, fund, and implement the new projects. Additionally, in order to effectively use scarce public resources, the planning and implementation of BMPs for the front basins should wait until the effectiveness of the BMPs for the back basins has been evaluated so that lessons learned from the back basins can guide the design of appropriate actions for the front basins.</p> <p>Further, additional actions by the cities will most likely be needed in the upstream watersheds and they will need time to plan and implement those actions.</p> <p>In summary, the current schedule would not allow for the previously mentioned logical steps to take place.</p>	<p>implementation schedule is intended to include the time to implement BMPs as well as to adapt them if needed to achieve compliance with the final waste load allocations. Furthermore, the County has already submitted an implementation plan to achieve the final waste load allocations assigned to its MS4 discharges, which is based on numerical modeling that evaluated the ability of the proposed BMPs to achieve waste load allocations. Therefore, the County should have confidence that the BMPs implemented according to its plan will result in attainment of waste load allocations and, therefore, an additional three to five years to evaluate BMP effectiveness once installed is not necessary.</p> <p>The revised TMDL includes newly identified impairments in the front basins of Marina del Rey Harbor and adds a separate implementation schedule to meet waste load allocations in the front basins. Interim compliance in the front basins is required in 2019 and final waste load allocations must be met in 2021. As discussed in the Los Angeles Water Board response, addressing the front basins in the TMDL has marginally increased the watershed size based on the additional waterbody surface and minor additional drainage within Basins G and H. The State Water Board agrees that a period of seven years to achieve the waste load allocations assigned to discharges to the front basins -- three years of which are beyond the compliance deadline for the back basins -- is a sufficient amount of time to address this additional area.</p> <p>The State Water Board does not agree that implementation planning for the front basins needs to wait for efforts in the back basins to be completed and then assessed for three years. The comment considers that parking lot retrofits will be used to meet the TMDL in the front basins. Knowledge and lessons</p>

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			<p>learned from implementation of parking lot retrofits in the back basins can be applied on an ongoing basis towards efforts to meet the TMDL in the front basins. Further, the design, operation and maintenance of biofiltration and bioretention BMPs – the types of BMPs proposed by the County – and their effectiveness is already well understood, since these types of BMPs have been used extensively in the region, the State, and across the nation.</p> <p>The comment states that additional actions will be required by the cities in the upstream watersheds. The comment does not provide details of these potential actions or a rationale for why additional time is warranted. Further, there is only a small portion of the land that drains to the front basins that is not under the jurisdiction of the County of Los Angeles. There are no “upstream watersheds”; all MS4 discharges to the front basins originate in the immediate vicinity of the basins in areas mostly under the jurisdiction of the County.</p> <p>Please see the relevant portion of the Los Angeles Water Board’s response to comment 05.1 to Los Angeles Water Board resolution R14-004, which states:</p> <p>The Marina del Rey Toxic Pollutants TMDL has been in effect since March 13, 2006. The County of Los Angeles has yet to complete implementation of the BMPs proposed in their implementation plan or any other BMPs specifically targeting toxic pollutants to address the impairments. The MS4 permit requires no new additional implementation projects in Marina del Rey as implied by the comment. The portion of the County of Los Angeles that drains to the back basins is 108 acres, or 0.17</p>

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			<p>square miles, and the County’s implementation plan for the back basins includes five parking lot retrofits, which will be completed by 2017. It is not apparent that any new projects are needed to comply with the TMDL. The timeline to achieve the TMDL in the back basins is therefore appropriate.</p> <p>The addition of the front basins has marginally increased the watershed size based on the additional waterbody surface and minor additional drainage within Basins G and H. An additional 95 acres of land drains to the front basins. The compliance schedule was revised to include separate timelines for the front and back basins to provide stakeholders more time for planning and additional flexibility. Under the proposed TMDL revision, MS4 dischargers to the front basins have until 2021 to meet waste load allocations.</p>
1.2	County of Los Angeles	<p><b>Response to Regional Board Comment 5.2 County Recommendation:</b></p> <p>The County requests that the compliance timeline for the copper waste load allocations be consistent with the schedule in SB 346 and also consider the life expectancy of copper containing brakes installed in cars prior to the deadline in SB 346. Accordingly, we request that the TMDL be revised to set compliance for copper in stormwater to 2030.</p> <p>If the State Water Board and Regional Board are not willing to extend the compliance date to meet the present SB 346 schedule, the State Water Board should at least require the Regional Board to reevaluate this timeline through a TMDL re-opener based on the progress of the</p>	<p>This comment was previously made to the Los Angeles Water Board. TMDL implementation plans submitted by the County to the Los Angeles Water Board in compliance with the 2006 TMDL identify zinc as the pollutant requiring the largest reduction in discharge in order to meet the TMDL in Marina del Rey Harbor. Therefore, the County’s implementation planning, including its proposed BMPs, is based on addressing zinc, such that all other impairments identified in the Marina del Rey Harbor Toxic Pollutants TMDL will be addressed through the same implementation actions. Given that the County is not implementing efforts specifically targeted to only address copper in storm water, it is not foreseeable that implementation will be altered based on the copper reductions anticipated through SB 346. Neither an extension of the timeline to meet the copper sediment TMDL, nor a mandatory reconsideration to evaluate the effects of SB 346 is warranted.</p>



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		<p>SB 346 implementation.</p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to the County’s Original Comment:</b> The Regional Board’s assertion that “it is possible that brake companies will go directly to low copper (i.e., 0.5% copper by weight) or copper-free brakes immediately, or achieve the 5% copper by weight requirement before 2021” is not based upon evidence in the Administrative Record. Additionally, given that SB 346 gave brake pad companies until 2025 to manufacture a low copper (0.5% copper) brake pad, there is no guarantee that the brake pad companies will meet the low copper requirement prior to the 2025 deadline.</p> <p>Even under the very idealistic scenario in which low copper brakes might be available by 2021, it would probably take five years or more from then (i.e., approximately 2026) before the copper brakes already on cars got replaced with the new low-copper or copper-free brakes (given the average life span of brakes).</p> <p>The TMDL requires meeting the copper targets and allocations by 2018 for the back basin and by 2021 for the front basins. These timelines are much shorter than the SB 346 schedule for phasing out copper from brakes and, thus may require stakeholders to take unnecessary costly measures to address copper contamination addressed by SB 346.</p> <p>According to the findings of the studies that led to the enactment of SB 346, brake pads account for up to 50 percent of copper load entering waterbodies in urban areas</p>	<p>The State Water Board disagrees that the Los Angeles Water Board’s finding that “it is possible that brake companies will go directly to low copper (i.e., 0.5% copper by weight) or copper-free brakes immediately, or achieve the 5% copper by weight requirement before 2021” is not based upon evidence in the Administrative Record. Please see the relevant portion of the Los Angeles Water Board’s response to comment 05.2 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">According to the Brake Pad Partnership, although quantitative information about brake pad copper reductions is not yet available, strong industry attention to low-copper and copper-free brake pads and promotion of these pads by companies already offering them (such as Honeywell, FDP Brake, Williams, Fastmagna.com, Bendix, Phoenix, ALCO, Wilson, Crowe, Aftermarket News, Murphy) provides evidence that implementation is underway and is proceeding in accordance with the process and time frames anticipated by the Brake Pad Partnership.</p> <p>This information provided by the Brake Pad Partnership is included in Administrative Record.</p>

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		<p>of California. While there are other sources of copper in the environment, it was recognized that brake pads are the major sources of copper and, thus, implementation of the SB 346 would significantly curtail copper loadings in stormwater and help attain the water quality standards. While BMPs that would be implemented to address other pollutants would also help address some of the copper in stormwater, it is expected that the remaining copper would be taken care of by the SB 346 efforts. Therefore, aligning the copper compliance time with the SB 346 schedule is needed to avoid unnecessarily redundant measures to address remaining copper loadings.</p>	
1.3	County of Los Angeles	<p><b>Response to Regional Board Comment 5.3 County Recommendation:</b></p> <p>The waste load allocations for the back basins and front basins should be separated. The County requests that the State Water Board reconsider the County’s comment based on the clarification provided. The County believes that lumping WLAs together for two waterbodies that have different compliance timelines is technically inaccurate and deserves appropriate correction.</p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to the County’s Original Comment:</b></p> <p>Given that the TMDL has different compliance dates for meeting the WLAs for the front and back basins, the TMDL should be clear on what WLAs apply to the stormwater discharges to the back basin versus to the front basin. In the absence of distinction between WLAs for the front and back basins, it would be difficult, if not impossible, to design appropriate BMPs and to evaluate</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 05.3 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board disagrees. While the Board acknowledges a degree of uncertainty regarding pollutant migration and loading between the front and back basins in dry and wet-weather, the Basin Plan amendment has provided sufficient flexibility for stakeholders to demonstrate compliance with the allocations in the front and back basins. Multiple compliance options, including a quantitative demonstration that control measures and BMPs are sufficient to achieve the WLAs (such as the “reasonable assurance analysis” approach used in the LA County MS4 Permit) are just some of the additional options included in the revised TMDL to provide stakeholders with greater flexibility in</p>

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		<p>compliance by the respective dates. As matter of practically, BMPs in each part of the watershed should be designed to attain the WLAs assigned to the respective watershed; a lumped WLA would make such practice difficult.</p>	<p>implementation and compliance determination.</p> <p>In addition, in incorporating the front basins into the Marina del Rey Harbor Toxic Pollutants TMDL at this time, it is the intent of the Regional Board that the watershed is addressed holistically. Single waste load allocations encompassing the entirety of the harbor align with this approach and will simplify incorporation of waste load allocations into permits.</p> <p>However, stakeholders may also conduct special studies and pilot projects to better inform their implementation planning and BMP optimization.</p> <p>The County has not explained why the Los Angeles Water Board's response to this comment was inadequate, but has instead reiterated its original comment. The multiple compliance options presented in the TMDL and explained in the Los Angeles Water Board's response to the original comment address the issue of BMP design. In addition, the County's implementation plan, submitted in accordance with the original TMDL, was based on their Watershed Management Modeling System, which modeled required load reductions per sub-basin drainage area for the back basin, even though the original TMDL waste load allocations for the back basins were expressed as a lump number. Therefore, the County should be able to perform the same analysis for the front basins, especially since the TMDL staff report presents the TSS loading per basin needed to conduct this analysis.</p>

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1.4	County of Los Angeles	<p><b>Response to Regional Board Comment 5.6 County Recommendation:</b></p> <p>The load allocation for dissolved copper is unrealistic and should be removed. The County requests that any action to require paint conversion be dealt with at statewide level. Such approach would encourage paint manufacturers to develop a viable alternative paints.</p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to County’s Original Response:</b></p> <p>In its response, the Regional Board stated that alternative antifouling paints are available and that they have been tested in Shelter Island Yacht Basin (SIYB). While it is true that there have been some studies of the specific conditions in SIYB, the results of those studies have not proven the availability of “viable” non-copper based paints, nor has there been a demonstration that any results in SIYB are applicable to Mdr Harbor. Many questions about the durability, maintenance, requirements, environmental safety, and costs of alternative paints are still unanswered. Further, the current results of attempted paint conversions of boats in SIYB demonstrate a very low rate of conversions. After 8 years of an aggressive program, less than 100 boats in SIYB have been converted.</p> <p>Scientific knowledge about and practical experience with alternative (non-copper) paints is in its infancy, and further studies are needed before a viable alternative is available on the market. In its memorandum released on January 30, 2014 (after the close of the comment period but before the hearing), the Department of Pesticide</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment.</p> <p>Please see the relevant portion of the Los Angeles Water Board’s response to comment 04.5 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Copper pollution in marinas from antifouling paints is acknowledged as a statewide and nationwide concern. When the original TMDL was adopted in 2005, it was anticipated that efforts to address pollution from antifouling paints would be addressed on a broader scale. These efforts have not come to fruition; therefore, the water column impairment in Marina del Rey Harbor must be addressed on a site-specific basis. Broader efforts, including actions resulting from AB 425, which directs DPR to estimate an acceptable copper leaching rate from copper-based paints, will serve to enhance the implementation efforts of this TMDL.</p> <p>The Department of Pesticide Regulation’s (DPR) leach rate recommendations outlined in the memorandum dated January 30, 2014 are not designed to meet the dissolved copper standard of 3.1 µg/L set forth in the California Toxic Rule (CTR) in all California marinas. Marina del Rey Harbor falls into the highest risk category discussed in DPR’s memorandum (scenario 5). DPR’s recommended leach rate is anticipated to meet CTR in those marinas that fall into scenarios 1 and 2. DPR projects the possibility of meeting CTR in marinas categorized in scenario 3 with copper discharge reductions achieved through additional mitigation recommendations, including hull cleaning BMPs.</p>

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		<p>Regulation (DPR) indicated that many of the currently registered antifouling paints need to be reformulated to attain an acceptable leaching rate that would reduce impact on water quality. DPR also acknowledged that reformulation of these existing products “may not be realized for many years due to the timeframes involved in reformulation, relabeling, registration approval, and market distribution.” (see DPR memo p. 6) Thus, the TMDL amendment would improperly prohibit the use of antifouling paints currently approved by the State while requiring the use reformulated paints, which do not yet exist in many instances. Regional Board staff was aware of this report at the time of the hearing, since they referenced it (see e.g. Hearing Transcript p. 224)1.</p> <p>Additionally, the unavailability of “viable” non-copper paints was testified at the Regional Board hearing by many commenters, including the boatyard owners in Mdr Harbor. Mr. Schem (a boatyard owner) testified:</p> <p><i>“...[T]here are no viable biocide-free paints currently available on the market. I'm going to repeat that. There are no alternatives that are biocide-free currently on the market. Making the assumption that they will be developed once these regulations are adopted is a very convenient hope, but it's not an alternative that currently exists.”</i> Hearing Transcript p. 258.</p> <p>This unavailability of viable paints was confirmed at the hearing by the owner of the other boat yard in the marina, Simon Landt:</p> <p><i>“I agree with everything that my fellow boatyard operator</i></p>	<p>The dissolved copper numeric target in the TMDL is equivalent to CTR. For the reasons discussed above, efforts beyond the paint reformulation efforts being led by DPR are required to meet the Marina del Rey Harbor Toxic Pollutants TMDL. The commenter states that “the TMDL amendment would improperly prohibit the use of antifouling paints currently approved by the State while requiring the use reformulated paints, which do not yet exist in many instances.” <u>The TMDL does not prohibit the use of antifouling paints.</u> Instead, the TMDL establishes a copper load reduction of 85% and discusses potential means of compliance, including conversions to non-toxic paint or very low copper paint, integrated pest management, and hull cleaning BMPs. The TMDL does not require the use of paints reformulated as a result of DPR’s efforts. Lower leaching copper paints and non-biocide paints are currently available. The reformulation of paints, resulting in the removal from the market of those paints with the highest copper leaching rates, may aid in the efforts to achieve the TMDL; however, these projected reformulations do not contradict the findings or requirements of the TMDL.</p> <p>The DPR memorandum dated January 30, 2014 was not made available to Los Angeles Water Board staff until after the Los Angeles Water Board hearing on February 6, 2014. This comment discusses Los Angeles Water Board staff reference to a DPR study on page 224 of the Hearing Transcript. The DPR study which Los Angeles Water Board staff referenced in the cited portion of the transcript is a 2009 study conducted by DPR that investigated copper concentrations in marinas throughout the state of California.</p>

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		<p><i>Greg Schem said. I'd also like to bring up that I did contact the boatyard managers in San Diego at Shelter Island Marine, and also Nielsen's at the request of the Water Board staff and talked with those managers there. And I just want to reiterate with Greg Schem said, that there are no viable copper-free, biocide free paints currently available for the use on the bottom of the boats if this TMDL is changed." Hearing Transcript p. 281.</i></p> <p>Additionally, one of the paint manufacturers testified that the current non-biocide paints were not useable by the average recreational boater:</p> <p><i>"MR. SZAFRANSKI: Thank you, Chair Stringer, Members of the Board. I'm Frank Szafranski with international paint. We're manufacturers of antifouling paints, copper-free paints and biocide-free paints. And I've been around biocide-free paints a lot over the last 20 years of my career. I'm sorry, I disagree with some of the data that you've been presented. I have not seen these paints go ten years. They're difficult to -- they're expensive to buy. They're difficult to apply. They're difficult to maintain and expensive to maintain. And the way boaters use their boats, these paints are a little bit tender. And when a log hits them, a fishing line cuts them, there's repairs that are needed to be made. Any boater who is actively boating is not going to get ten years out of those coatings. We're the manufacturer. I get it. We like it. It's really great for commercial freighters, which is what it was designed for. And they cite just tremendous fuel savings as a result of it. But for boaters here in Marina del Rey and for the recreational boater I general, I'm not sure that this is the product to use. Thank you." Hearing Transcript pp. 285-</i></p>	<p>This comment cites testimony from the two boatyard owners and a paint manufacturer that there are “no viable biocide-free paints currently available on the market”. These statements contradict statements made by the boatyards at an October 15, 2013 meeting with Los Angeles Water Board staff. At that meeting, both boatyards stated that they carried copper-free paints on their shelves and that they were available from other retailers as well. One of the boatyards, named “The BoatYard” stated that they had done five conversions to biocide-free coatings that year and the other boat yard named “Windward Yacht Center” stated that they had done one. At that meeting, the boatyards discussed the constraints to using non-toxic paints, such as more frequent hull cleaning, and hazardous waste disposal, and the Los Angeles Water Board discussed those constraints in the documents supporting the TMDL.</p> <p>If this comment means that non-toxic paints are not “viable” because they do not, on their own, deter fouling, then the State Water Board agrees, and notes that the Los Angeles Water Board agrees as well. For example, according to the TMDL staff report, “Nontoxic hull coatings can be less effective at preventing the attachment of fouling organisms, so they should be used with a companion strategy to increase their efficacy. Such companion strategies may include in-water hull cleaning (to remove built-up organisms), storage in a slip liner, or storage out of water in order to control fouling organisms.” Thus, the Los Angeles Water Board considered the input of the boatyard owners and paint manufacturers before releasing the draft TMDL for public comment as well as at the adoption hearing, and took into account the efficacy of non-toxic paints and their constraints when developing and adopting the TMDL.</p>

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		<p>286.</p> <p>The Regional Board failed to cite to or include any evidence to support its statement that "It is anticipated that additional paint options will become available during the implementation of this TMDL." The testimony of Mr. Schem, other commentators at the hearing, and the DPR Report all contradict the Regional Board's statement.</p>	<p>The State Water Board finds that there are alternative non-toxic paints available. Please see the relevant portion of the Los Angeles Water Board's response to comment 05.6 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Alternative antifouling paint options are available and have been tested in Shelter Island Yacht Basin (SIYB). It is anticipated that additional paint options will become available during the implementation of this TMDL. The Port of San Diego has shared results of studies and made paint recommendations available to the public on their website: <a href="http://www.portofsandiego.org/environment/copper-reductionprogram.html">http://www.portofsandiego.org/environment/copper-reductionprogram.html</a>. Additional information to aid in selecting an alternative hull paint and on integrated pest management can be found through the University of California website: <a href="http://ucanr.org/sites/coast/">http://ucanr.org/sites/coast/</a>.</p>
1.5	County of Los Angeles	<p><b>Response to Regional Board Comment 5.7 County Recommendation:</b></p> <p>The loading capacity of the Harbor for dissolved copper is significantly underestimated. The County respectfully requests that the State Water Board direct the Regional Board to correct this technical error and associated TMDL allocations.</p> <p><b>Reasons For Inadequacy Of Regional Board's Response to County's Original Comment:</b></p> <p>It is undisputed that the Technical Memorandum, created in 2002 by USEPA and Regional Board at the time of the development of the original TMDL, reported an incorrect water surface area for Mdr Harbor. This error should be</p>	<p>This comment was previously made to the Los Angeles Water Board. In reviewing the previous response, the State Water Board determined that the Los Angeles Water Board misunderstood the comment and responded incorrectly. It is apparent that the Los Angeles Water Board thought the original comment was referring to the watershed area used to calculate the loading capacity for the sediment TMDL for the newly added front basins. That watershed area was obtained from the PLOAD Model, while the surface area of the Harbor used to calculate the dissolved copper loading capacity was obtained using GIS. Thinking that the comment was about the watershed area for the sediment TMDL, the Los Angeles Water Board's response was that they could not change the loading capacity for front basins without changing the loading capacity for the back basins, and such action would be outside</p>

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		<p>corrected.</p> <p>In this instance, the Regional Board's calculation error has a significant impact. The error may have increased the required copper reduction approximately by 20 percent. This means, instead of 85 percent reduction, it would be only about 70 percent reduction that may be needed if the error is corrected.</p> <p>Accordingly, we respectfully disagree with Regional Board's response that such action is "<i>beyond the scope</i>" of the current TMDL re-opener. It is both illogical and legally erroneous to hold that correcting a technical error in the TMDL is considered "<i>beyond the scope</i>" of the TMDL re-opener while at the same time the re-opener was used to extensively expand the TMDL to include additional pollutants, water-bodies, and sources.</p>	<p>of the scope of the TMDL reconsideration.</p> <p>Regarding the actual comment about the loading capacity for the dissolved copper TMDL, the State Water Board disagrees that the Los Angeles Water Board made a calculation error. It is uncertain how the County measured the surface area of the Harbor. No documentation has been provided to support the calculation of a different area. The Los Angeles Water Board's calculation is based on GIS using ESRI World Imagery as the basis for digitizing the Marina del Rey Harbor.</p> <p>The statement in this comment that it is undisputed that the area in the PLOAD Model is incorrect is therefore a moot point. However, the State Water Board disagrees with this characterization. The Los Angeles Water Board did not consider whether the water surface area is correct or incorrect because it was outside the scope of the reconsideration. The State Water Board concurs with the Los Angeles Water Board's determination that this issue is beyond the scope of the current TMDL revision.</p> <p>The responsible parties submitted a white paper to the Los Angeles Water Board dated June 27, 2013, <i>Reconsideration Elements, Marina del Rey Harbor Toxic Pollutants TMDL</i>. The white paper detailed issues that the responsible parties requested for inclusion in the TMDL revision. The watershed area utilized in the PLOAD model was not disputed at that time.</p>
1.6	County of Los Angeles	<p><b>Response to Regional Board Comment 5.8 County Recommendation:</b></p> <p>The conversion of boat hull paint from a biocide-based</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the relevant portion of the Los Angeles Water Board's</p>



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		<p>paint to a non-biocide based paint may create unintended environmental consequences. Once again, the County would like to request that the unintended environmental consequences of the TMDL be further evaluated, along with the site specific objective study of dissolved copper addressed elsewhere in these comments, before the implementation of copper limits, which effectively require the use of a paint system of dubious environmental value. Any provisions, which would effectively require the conversion to noncopper based paints, should only be implemented after viable alternatives that would address the competing environmental issues are developed and available on the market.</p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to the County’s Original Comment:</b> In its response, the Regional Board referenced the Substitute Environmental Document and the assertion therein that “...<i>hull cleaning practices [are] one potential mitigation measure for potential impacts related to invasive species.</i>” This recommendation by the Regional Board is surprising given that the Regional Board has previously cited hull cleaning as a major cause of enhanced copper leaching from paints. There is no guarantee that alternative paints are free of water quality impacts under frequent cleaning. Therefore, the Regional Board’s recommendation of enhanced hull cleaning to control invasive species may negate the very purpose of the TMDL. In fact, stakeholders are considering the possibility of reducing hull cleaning as tool to reduce copper leaching.</p> <p>Further, the Regional Board’s assertion that “...<i>the</i></p>	<p>response to comment 05.8 to Los Angeles Water Board resolution R14-004, which states:</p> <p>The SED acknowledges that increased growth of fouling organisms and invasive species could result from the switch from copper based anti-fouling paint. The SED identifies mitigation measures to address that potential impact. The SED properly identifies hull cleaning practices as one potential mitigation measure for potential impacts related to invasive species. (See Chapter 6.2.2, pp. 61-76).</p> <p>In addition, the SED includes a statement of overriding considerations which states that in view of the entire record supporting the TMDL, the specific economic, legal, social, technological, and other benefits of the proposed TMDL outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances.</p> <p>The commenter misunderstands the previous response to comment and the mitigation measure identified in the SED. The SED refers to increased hull cleaning of <u>non-toxic</u> coatings in order to deter the buildup of fouling organisms. If there are no toxic ingredients in the hull coatings, then no toxic ingredients will be released during hull cleaning.</p> <p>The statement of overriding considerations complies with CEQA Guidelines section 15093. The substantial evidence is contained in the TMDL staff report and the response to comments, demonstrating the federal requirement to implement programs to ensure that the established water</p>

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		<p><i>benefits of the proposed TMDL outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances</i>” is neither substantiated by evidence nor will it be acceptable to other environmental permitting authorities, such as the California Coastal Commission and the California Department of Fish and Wildlife.</p> <p>Further, the Regional Board's suggestion of hull cleaning to prevent the introduction of invasive species is illogical. In order for that process to work, the cleaning would have to take place in open waters <i>before</i> a boat enters MdR Harbor. Otherwise, the exact risk of the boat carrying in the invasive species occurs. Yet, the Regional Board offers no explanation of how such open water cleaning could occur, and the County is unable to conceive of any way to practically and safely perform such a practice.</p>	<p>quality standards for toxic pollutants are attained in the impaired water bodies.</p> <p>The State Water Board disagrees that hull cleaning to prevent the introduction of invasive species is an illogical suggestion. Culver, Johnson and Lande (2012)<sup>2</sup>, which was cited in the TMDL staff report, reported results of a study that investigated the California Professional Diver Association’s (CPDA’s) BMPs for hull cleaning. According to Culver and Johnson:</p> <p>Our results support the use of the CPDA’s BMPs for hull cleaning. These practices not only help control fouling without stimulating it, but the frequent gentle cleaning also has the added benefits of:</p> <ul style="list-style-type: none"> <li>• extending the life of a hull coating, as a less aggressive tool is needed, leading to fewer deep scratches/chipping and fewer remnant parts of fouling organisms;</li> <li>• decreasing time available for development of NN and other fouling organisms, thereby reducing the likelihood that they will reach maturity and reproduce in the home port or elsewhere; and</li> <li>• increasing the likelihood that organisms will be damaged and removed while they are smaller and less developed, thereby not surviving in the harbor.</li> </ul>

<sup>2</sup> Culver, C., L. T. Johnson, and M. Lande. 2012. IPM for Boats: Integrated Pest Management for Hull Fouling in Southern California Coastal Marinas. UCCE-SD Technical Report 2012-2 California Sea Grant Report T-074

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			<p>The required reduction in copper discharge from boat hulls should be accompanied by the use of alternative means of deterring hull fouling and the State Water Board does not find the TMDL to contradict the application of appropriate and necessary measures to prevent the transport of invasive species.</p> <p>In addition, studies showing copper tolerance of invasive species suggest that additional and replacement means of preventing invasive species transport are necessary<sup>3</sup>.</p>
1.7	County of Los Angeles	<p><b>Response to Regional Board Comment 5.9 County Recommendation:</b></p> <p>The County is in the process of conducting a special study to determine the appropriate dissolved copper targets for the harbor water. The County requests that the Regional Board work collaboratively on this study and commit to consider the results of the study once completed. The County also requests that the dissolved copper targets in the revised TMDL either be removed, pending completion of the copper site-specific study (at which time the TMDL can be reopened to include appropriate dissolved copper targets), or the compliance period for meeting such targets be sufficiently extended to allow for: (1) the performance of the site-specific study; and (2) the development of viable alternative paints, as discussed above.</p> <p>Alternatively, if the State or Regional Board is unwilling to make such changes at this time, the revised TMDL</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the Los Angeles Water Board's response to comment 05.9 to Los Angeles Water Board resolution R14-004, which states:</p> <p>The California Toxics Rule criteria for copper in saltwater are based on dissolved copper concentrations. A site-specific study may be conducted in Marina del Rey Harbor to investigate the potential effects on toxicity of copper complexation by organic ligands. In the absence of such a study, CTR criteria are the appropriate water quality standards for dissolved copper in Marina del Rey Harbor.</p> <p>Please see the Los Angeles Water Board's response to comment 04.4 to Los Angeles Water Board resolution R14-004, which states:</p>

<sup>3</sup> Johnson, L. T., L. Fernandez, and M. D. Lande. 2012. Crossing Boundaries: Managing Invasive Species and Water Quality Risks for Coastal Boat Hulls In California and Baja California. UCCE-SD Technical Report 2012-1 California Sea Grant Report T-073.

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		<p>should include an express provision that the TMDL will be re-opened <i>to revise the dissolved copper targets and load allocations upon the completion of the copper site-specific objectives study.</i></p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to the County’s Original Comment:</b> There is a significant body of evidence that suggests that the current CTR-based standard for marine waters is overly protective of the intended beneficial uses, warranting the need to conduct a site-specific study. While the County recognizes the need for developing site-specific objectives for Mdr Harbor and is willing to conduct such study, it is inappropriate to set a target before this study is complete.</p> <p>The need and importance of site-specific- objectives for Mdr Harbor was expressed in the written and oral comments by many commenters, including the County. Even the Regional Board’s Executive Director recognized the development of site specific-objectives could adjust the targets. (see Hearing Transcript p. 321)</p> <p>In this regard, the County has urged the USEPA to expedite the completion of the BLM model, which can be used for development of the site-specific criteria that is more realistic for Mdr Harbor.</p>	<p>The California Toxics Rule provides the applicable water quality criteria for copper in saltwater. The chronic copper salt water criterion of 3.1 µg/L is a national criterion and is based on species and sites that are reflective of sites throughout the nation, including Marina del Rey Harbor. A site-specific study has not been conducted in Marina del Rey Harbor that would enable evaluation of the appropriateness of a site-specific objective. Thus, it is not appropriate at this time to set a site-specific objective for copper in the water column of Marina del Rey Harbor.</p> <p>A Biotic Ligand Model (BLM) for copper in saltwater has not been approved by U.S. EPA for use as a water quality criteria. A date when a BLM for copper in saltwater may be approved by U.S. EPA is uncertain. The California Toxics Rule promulgated 3.1 µg/L as the Criterion Continuous Concentration (CCC) and 4.8 µg/L as the Criterion Maximum Concentration (CMC) for copper in saltwater. These criteria are the appropriate water quality objectives to protect aquatic life in Marina del Rey Harbor. Should U.S. EPA adopt a saltwater BLM as the recommended water quality criteria and a site-specific study in Marina del Rey Harbor indicates that alternative water quality objectives, which may be higher or lower than the current objectives, are appropriate, the TMDL can be reconsidered at any time to incorporate such findings.</p> <p>Results of preliminary site-specific modeling of</p>

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			<p>Marina del Rey Harbor presented in a 2009 Department of Pesticide Regulation (DPR) report suggest a potential FCC (equivalent to CCC) ranging between 2.9 and 5.3 µg/L and a potential FAC (equivalent to CMC) of 1.5 – 8.2 µg/L. While this modeling has not been vetted by the Regional Board, the criteria promulgated in the California Toxics Rule (CCC: 3.1 µg/L, CMC: 4.8 µg/L) fall within the range suggested by the DPR study. California Toxics Rule criteria are designed to be protective and thus it is consistent that the 3.1 µg/L proposed as the TMDL numeric target and the corresponding CTR criterion falls toward the lower range of the FCC presented in the 2009 DPR report.</p> <p>The TMDL may be revised at any time to incorporate the results of new scientific studies, including a site-specific objective if appropriate. Postponing actions to address the impairment are not supported since there is time to evaluate a site-specific objective prior to the compliance deadline. Continued delay in implementing the TMDL will result in continued detriment to the aquatic community residing in the Harbor.</p>
1.8	County of Los Angeles	<p><b>Response to Regional Board Comment 5.10 County Recommendation:</b></p> <p>The County requests that the compliance timeline for the dissolved copper be set to a minimum of 36 years or 2048. This timeline is determined based on the following considerations: (i) the boatyards in MdR Harbor have indicated that they could strip and paint about 150 boats per year. At this rate, full conversion would take over 31</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the relevant portion of the Los Angeles Water Board’s response to comment 04.4 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">The timeline also accounts for the capacity of the boat yards in Marina del Rey Harbor to apply hull</p>

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		<p>years for the over 4,700 boats in the harbor; (ii) an evaluation period of at least 5 years for evaluating alternative paints and educating boaters.</p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to the County’s Original Comment:</b> There is no evidence in the record to indicate that 85% reduction in dissolved copper can be achieved in 10 years. The County and other commenters have provided evidence that achieving this level of reduction in copper is not possible in part due to the lack of a “viable” alternative (non-biocide) paint on the market. The Regional Board completely ignored the obvious impact of product unavailability in setting such a short compliance period. See the County's further responses for item 05.6 above.</p> <p>Moreover, Regional Board staff has stated that they based the TMDL’s 10- year compliance timeline on estimates from the owners of the two boatyards in MdR Harbor that their theoretical maximum capacity to replace boat paint with a non-biocide paint would be 500 boats per year. However, as demonstrated in the County's comments to the Regional Board, and as fully supported by those same boatyard owners, that theoretical maximum is impossible to achieve in the real world, since those same boatyards are already at near capacity performing normal boat maintenance and other activities, which will have to continue to be performed even during attempts to convert boats to non-biocide paint. As the County's prior comments demonstrated, the real world potential for boat conversions is far below even 400 boats per year. This has a dramatic impact on the minimum period needed to</p>	<p>paints to all boats residing in Marina del Rey Harbor. Additionally, delay in implementing the proposed TMDL will result in continued detriment to the aquatic community residing in the harbor. The Los Angeles Regional Board also intends to help secure grant funding for paint conversions. Furthermore, enforceable regulatory mechanisms are available to ensure implementation of the TMDL. It is anticipated that the available funding combined with the regulatory tool will provide the incentive for boaters to switch bottom paints. Thus, the Regional Board finds the proposed timeline to be reasonable and achievable.</p> <p>The proposed TMDL does not require the boat yards in Marina del Rey to strip and apply biocide free paint to <i>every boat</i> within 10 years. Please see the relevant portions of the Los Angeles Water Board’s response to comment 05.10 to Los Angeles Water Board resolution R14-004, which states:</p> <p>During development of the proposed TMDL revision, Regional Board staff met with the two boatyard owners in Marina del Rey who estimated that it would take about 10 years to convert <i>all</i> of the boats in the marina (i.e., 5300, not 4500 boats) to non-copper paint if both boatyards in the Marina were working at full capacity.</p> <p>In other words, if compliance with the TMDL were to be achieved solely by conversion to non-toxic paints, only 85% of the boats in Marina del Rey Harbor would need to convert, not <i>every boat</i>. Assuming that there are 4754 boats in the harbor as was assumed in the TMDL source assessment, only</p>

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		<p>perform the required conversions.</p> <p>For example, if the real world maximum capacity is only 300 boats per year, converting the over 4,700 boats in MdR Harbor would take almost 16 years. If the true capacity number is only 150 boats per year (which the evidence indicates is the true figure), full conversion would take over 31 years, even if a viable paint alternative was available which, as discussed above, it is not. The testimony at the hearing from the boat yard owners validated this 30 year plus figure. Boat yard owner, Greg Schem, testified:</p> <p><i>"Even if every boater wanted to switch to biocide [sic] paint it would take the two boatyards in Marina del Rey 30 to 50 years to strip and repaint them as the capacity does not exist on top of our current workload. In addition, the yards would have to invest in expensive infrastructure in order to create the required climate-controlled environments, acquire the necessary AQMD permits, and modify their travel list to work with these types of extreme slippery paints."</i> Hearing Transcript p. 259. This was confirmed at the hearing by the owner of the other boat yard in the marina, Simon Landt. Hearing Transcript p. 281.</p> <p>It is critical that a timeline be set by taking into consideration the realities on the ground.</p>	<p>4041 boats would need to convert to nontoxic paints if the TMDL were solely achieved by paint conversions. Los Angeles Water Board staff met with the boatyards on October 15, 2013 and at that meeting the boatyards stated that if they were operating at maximum capacity, and assuming a portion of time and resources were set aside for regular boat maintenance, both boatyards combined could convert approximately 500 boats to non-toxic paint per year. Thus, based on this assumption, it would take approximately 8 years to convert the necessary number of boats. The Los Angeles Water Board found that a ten-year schedule, combined with the fact that there are alternatives to complying solely via paint conversions, such as BMPs, was in line with the boatyards' ability to do conversions.</p> <p>Since the October 15, 2013 meeting, the boatyards revised their estimates of their capacity to do paint conversions as evidenced in their testimony at the February hearing. However, it still remains a fact that there are alternatives to comply with the TMDL other than paint conversions. The TMDL offers several alternative compliance demonstrations to accommodate different compliance strategies, including a combination of low copper paints, non-toxic paints, hull cleaning BMPs, slip liners, integrated pest management, etc. In addition, boaters could have their boats repainted with nontoxic paints at boatyards outside of the Marina.</p> <p>Thus, the State Water Board finds that a ten-year schedule is reasonable and notes that the Los Angeles Water Board could revise the TMDL at any time if it were demonstrated that the implementation schedule was unattainable despite responsible parties' best efforts to comply.</p>

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1.9	County of Los Angeles	<p><b>Response to Regional Board Comment 5.11 County Recommendation:</b></p> <p>The County requests that the compliance timeline for the dissolved copper be set to a minimum of 36 years or 2048.</p> <p>This timeline is determined based on the following considerations: (i) the boatyards in MdR Harbor have indicated that they could strip and paint about 150 boats per year. At this rate, full conversion would take over 31 years for the over 4,700 boats in the harbor; (ii) an evaluation period of at least 5 years for evaluating alternative paints and educating boaters.</p> <p><b>Author Reasons For Inadequacy Of Regional Board’s Response to the County’s Original Response:</b> Despite the availability of grant funding, the Shelter Island Yacht Basin program has failed to convert a large number of boats to non-copper paints. The most recent report on the Port of San Diego’s website states that only 30 boats have taken advantage of the hull repainting grant program. Similarly, the City of Newport Beach has also commented that, even with grants, “...boaters were not interested in changing paints to unknown and possibly less effective alternatives.” Further, the Regional Board’s assertion that stripping and repainting a boat hull is part of the normal course of operation and maintenance over a ten year period is at odds with what has been reported by the Marina del Rey boat yard owners. They have reported that it is not uncommon for boats to go 20 years or longer</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment.</p> <p>This comment contains information that contradicts information relayed to Los Angeles Water Board staff by boat yard owners during the development of the TMDL. Regardless, the TMDL implementation schedule is conservatively long by assuming that the boat hulls of every boat in the marina, were the marina at full capacity, to be repainted. Considering the various alternatives for achieving the copper reduction, it is foreseeable that a smaller number of boats would be stripped of hull paint than considered in the TMDL. Marina del Rey Harbor is also not currently at capacity, and this reduces the number of boat hulls that currently need to be addressed through implementation measures from that projected in the TMDL. Implementation measures could result in boats that are new to Marina del Rey Harbor arriving in a condition that would meet the TMDL. Additionally, implementation measures including hull cleaning BMPs and very low copper paints may reduce the number of boat hulls that require repainting.</p> <p>There is much discrepancy in the reported frequency at which boat hulls are regularly stripped of hull paint. The Los Angeles Water Board relied on personal communication in combination with published reports in determining the current rate of paint stripping. The boatyards estimated that boats were regularly stripped every 10 to 20 years in their meeting with Los Angeles Water Board staff in October 2013. In a poll</p>

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		<p>without having their paint stripped off. <i>See, e.g.</i> testimony from boat yard owner, Greg Schem, at the hearing:</p> <p><i>"Since these [non-copper] paints are much more delicate it is likely they will not last as long as traditional paints. Boat bottoms will need to be newly stripped in order to apply biocide-free paints. As a typical boat is stripped only about every 20 to 30 years, not 7 to 10..."</i> Hearing Transcript p. 259. This was confirmed at the hearing by the owner of the other boat yard in the marina, Simon Landt. Hearing Transcript p. 281.</p> <p>As noted by the Regional Board's comments, the Los Angeles Waterkeeper boat "is in frequent use". LAW has stated that they typically take their boat out three times a week. This is far more frequent than the typical Marina del Rey pleasure boater, and allows less time for fouling organisms to attach to the hull. Thus, while a noncopper paint may be sufficient in such a frequent use scenario, the utility is far less certain for the typical boat in the Marina.</p>	<p>of boatyards in San Diego and Orange Counties conducted by Johnson and Miller (2003)<sup>4</sup>, which was relied upon in the development of the TMDL, boatyards reported that boats need to be stripped after 8 to 20 years.</p> <p>The frequency of current paint stripping will not hinder the ability to implement the TMDL or reduce the necessity to meet water quality standards in a timely fashion.</p> <p>The State Water Board finds it reasonable to expect that boats that are moved less frequently may require increased hull cleaning frequency when compared to boats that are utilized regularly.</p>
1.10	County of Los Angeles	<p><b>Response to Regional Board Comment 5.12 County Recommendation:</b></p> <p>Addressing copper contamination from antifouling paints requires a statewide regulation, not a local regulation. We urge that DPR's efforts be taken into account in setting the TMDL requirements and timelines.</p> <p>We also request that the following re-opener language be added to the TMDL:</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. The TMDL does in fact take into account the efforts of the Department of Pesticide Regulation (DPR). Please see the Los Angeles Water Board's response to comment 05.12 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="text-align: center;">Low copper paints may aid in achieving the TMDL as an interim step. This approach will begin the</p>

<sup>4</sup> Johnson, L. T. and J. A. Miller. November 2003. Making Dollars and Sense of Nontoxic Antifouling Strategies for Boats. California Sea Grant Report T-052.

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Amendment to the Water Quality Control Plan for the Los Angeles Region  
to Revise a TMDL for Toxic Pollutants in Marina del Rey Harbor

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		<p><i>The Regional Board will re-open the TMDL to revise the Implementation schedule based on the time it would take DPR to complete paint reformulation.</i></p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to the County’s Original Comment:</b> While we are encouraged to hear that the effort by the DPR would help address water quality impacts emanating from boat paints, we are concerned that the TMDL timeline, as currently proposed by the Regional Board, does not take into account the timeline for the DPR process.</p> <p>In its report released on January 30, 2014 (after the close of the comment period but before the hearing), the Department of Pesticide Regulation (DPR) indicated that many of the currently registered antifouling paints need to be reformulated to attain an acceptable leaching rate that would reduce impact on water quality. DPR also acknowledged that reformulation of these existing products “<i>may not be realized for many years due to the timeframes involved in reformulation, relabeling, registration approval, and market distribution.</i>” Thus, the TMDL amendment would improperly prohibit the use of antifouling paints currently approved by the State while requiring the use of reformulated paints, which do not yet exist in many instances. Regional Board staff was aware of this report at the time of the hearing, since they referenced it (see e.g. Hearing Transcript p. 224)</p> <p>As we have indicated before, the best way to address water quality impacts from hull paints is through source</p>	<p>process of reducing the discharge of copper into the harbor [and] may be particularly useful as an interim step in progressing towards the use of non-copper hull paints. The Department of Pesticide Regulation is currently tasked with determining an acceptable leach rate of copper from antifouling paints that will not result in the exceedance of water quality standards (California law AB 425). Results of this effort may aid in meeting the TMDL.</p> <p>The following response is based on a review of DPR’s memorandum dated January 30, 2014. This memorandum was not made available prior to the Los Angeles Water Board consideration of the TMDL on February 6, 2014. Hence, this memo was not considered by the Los Angeles Water Board when developing and approving the TMDL.</p> <p>The State Water Board finds no reason to alter the Marina del Rey Harbor Toxic Pollutants TMDL based on DPR’s memorandum dated January 30, 2014.</p> <p>The DPR leach rate recommendations outlined in the memorandum dated January 30, 2014 are not designed to meet the dissolved copper standard of 3.1 µg/L required by CTR in all California marinas. Marina del Rey Harbor falls into the highest risk category discussed in DPR’s memorandum (scenario 5). DPR’s recommended leach rate is anticipated to meet CTR in those marinas that fall into scenarios 1 and 2. DPR projects the possibility of meeting CTR in marinas categorized in scenario 3 with copper discharge reductions achieved through additional mitigation recommendations, including hull cleaning BMPs.</p>

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		control, which requires reformulation of the paints, as DPR is currently pursuing.	<p>DPR's proposed leaching rate and mitigation recommendations incorporate research from Earley 2013<sup>5</sup> that compared leaching of paints subjected to regular hull cleaning with hulls that were not cleaned at all during the course of the study. While those results show higher leaching from paints that are subject to hull cleaning, the effect on copper leaching of variations in the frequency of hull cleaning was not investigated. Thus, the effect of reducing hull cleaning frequency on the leaching rate of copper into the water column is uncertain. The State Water Board supports further investigation into the effects of hull cleaning BMPs on copper leaching reduction, and finds that they are a reasonably foreseeable and potentially effective means of compliance, but notes that it may take a combination of implementation actions to attain the TMDL.</p> <p>The dissolved copper numeric target in the TMDL is equivalent to the CTR criterion for protection of aquatic life from chronic toxicity due to copper. For the reasons discussed above, efforts beyond the paint reformulation effort being led by DPR are required to meet the Marina del Rey Harbor Toxic Pollutants TMDL. The commenter states that "the TMDL amendment would improperly prohibit the use of antifouling paints currently approved by the State while requiring the use reformulated paints, which do not yet exist in many instances." <u>The TMDL does not prohibit the use of antifouling paints.</u> Instead, the TMDL assigns a copper load reduction of 85% and discusses potential means of compliance, including conversions to non-toxic paint or very</p>

<sup>5</sup> Earley, P. J., B. L. Swope, K. Barbeau, R. Bundy, J. A. McDonald and I. Rivera-Duarte. January 30, 2014. Life cycle contributions of copper from vessel painting and maintenance activities. *Biofouling*. 30(1):51-68

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			<p>low copper paint, integrated pest management, and hull cleaning BMPs. The TMDL does not require the use of paints reformulated as a result of DPR’s efforts. Lower leaching copper paints and non-biocide paints are currently available. The reformulation of paints, resulting in the removal from the market of those paints with the highest copper leaching rates, may aid in efforts to achieve the TMDL; however, these projected reformulations do not contradict the findings or requirements of the TMDL.</p>
1.11	County of Los Angeles	<p><b>Response to Regional Board Comment 5.14 County Recommendation:</b></p> <p>The County requests that the compliance date for the in-harbor sediment be set to 2038 to allow sufficient time to plan, evaluate, and take appropriate measures.</p> <p>The 2038 (or 25 years) timeline is proposed based on the following considerations, with some of the activities taking place in parallel: (a) About 10 years (2014-24) for studies and MS4 implementation. This involves participation in the State’s effort for SQO Part 2, the completion of monitoring and studies to assess the extent of sediment contamination, implementation of the Oxford Basin project, and implementation of MS4 related BMPs. (b) About 5 (2022-2026) years for developing a sediment management plan. This involves evaluation of sediment remedial options, identification of sediment placement sites, and preparation of sediment management plan. (c) About 5 years (2025-29) for design and permitting. This involves securing funds, obtaining environmental permits, and developing engineering design. (d) About 9 years (2030-38) for Sediment remediation. This involves evaluating natural degradation and sediment removal</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 05.14 to Los Angeles Water Board resolution R14-004, which states:</p> <p>The Regional Board disagrees. The original TMDL requires Cleanup and Abatement Orders to address toxicity hotspots within in-harbor contaminated sediments to be promptly issued as a result of data submitted pursuant to the TMDL. Responsible parties completed a Sediment Characterization Study in 2008 indicating that sediment impairments are not confined to hotspots but rather are pervasive throughout harbor sediments. To allow time for planning efforts and to ensure that sources of toxic pollutants to the harbor are controlled prior to remediation, the Regional Board has proposed replacing the requirement to issue Cleanup and Abatement Orders with Load Allocations for in-harbor sediments and an implementation schedule to meet the Load Allocations. The Regional Board finds this approach reasonable and has based the</p>

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		<p>needed.</p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to the County’s Original Comment:</b> The County continues to believe that the 2029 timeline was set arbitrarily. As the largest harbor of its kind in the United States, MdR Harbor is very complex and there is no evidence in the record to indicate that the TMDL’s allocations for this harbor can be achieved within the proposed timeframe.</p> <p>On the other hand, the County has informed the Regional Board that it will need approximately 25 years (through 2038) to: (1) allow the elimination of new contamination through the MS4; (2) conduct studies to determine the true scope of the contamination; (3) devise a remediation method that will work but will not close the entire marina for years or kill off all flora and fauna in the marina; and (4) implement the required remediation.</p> <p>With too short of a schedule, there will not be time to evaluate cost-effective and environmental friendly approaches; instead much more drastic, expensive, and ineffective measures will be required. The Regional Board's comment that "The timeline of 2029 presumes planning efforts will begin early in the implementation schedule of the TMDL and that the beginning phase of remediation may coincide with monitoring to ensure all sources are controlled" demonstrates that the Regional Board intends that the County immediately start with drastic measures before a determination is made as to the true scope of the measures required. It should be noted that Regional Board’s own estimation of the sediment</p>	<p>implementation schedule on allowing approximately one year to dredge each basin in the Marina (this timeline was based on previous local dredging efforts). The timeline of 2029 presumes planning efforts will begin early in the implementation schedule of the TMDL and that the beginning phase of remediation may coincide with monitoring to ensure all [current] sources are controlled.</p> <p>Based on early discussions with the County of Los Angeles, Department of Public Works during TMDL development language has been included in the proposed TMDL to allow flexibility:</p> <p>“The TMDL may be reconsidered to revise the implementation schedule in order to ensure that pollutant sources are controlled and a suitable location for contaminated sediment disposal is available prior to remediation of contaminated sediments if the County has made a good faith effort to plan, fund, and permit sediment remediation activities.”</p> <p>Thus, there will be an opportunity to revise the sediment remediation schedule if warranted.</p> <p>Remediation of contaminated in-harbor sediments was included in the original TMDL and is not a new requirement in the revised TMDL. As such, the implementation schedule proposed in this comment, with completion in 2038, would result in a 32-year implementation schedule rather than the 25 years stated in the comment.</p>

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		<p>remediation is in the order of \$150 million. Before embarking on such massive project the County should be given sufficient time to study and evaluate all available alternatives.</p>	<p>The revised TMDL requires load allocations for in-harbor sediments to be met in 2029, 23 years after the effective date of the original TMDL. The State Water Board finds no compelling reason to extend this implementation schedule.</p> <p>In addition, the comment's assertion that there is no evidence in the record to support the 2029 timeline is incorrect. As stated in the Los Angeles Water Board's response, the timeline is based on previous local dredging efforts and presumes planning efforts will begin early so that remediation may coincide with monitoring to ensure all sources are controlled.</p> <p>Finally, the State Water Board recently adopted a TMDL for the Los Angeles and Long Beach Harbor waters that required sediment remediation by 2032. The requested deadline of 2038 for Marina del Rey Harbor seems excessive given that it is approximately one-tenth the size of the Los Angeles and Long Beach Harbors.</p>
1.12	County of Los Angeles	<p><b>Response to Regional Board Comment 5.15 County Recommendation:</b></p> <p>The County requests that sufficient time be given to allow evaluating the role of natural attenuation prior to taking complex and expensive sediment removal action. An example where natural degradation is playing a vital role is the case of the superfund site at Palos Verdes Shelf, the largest DDT and PCBs deposit site in the nation. Recent surveys of the site have shown that both DDT and PCBs are disappearing at a faster rate than expected.</p> <p><b>Reasons For Inadequacy Of Regional Board's Response to the County's Original Comment:</b></p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the Los Angeles Water Board's response to comment 05.15 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">The rate and amount of attenuation occurring at the Palos Verdes (PV) Shelf is less than certain. U.S. EPA is currently in the process of conducting additional sediment and tissue sampling at the PV Shelf to further study the current conditions and potentially assess background degradation and sediment migration from the site due to the steep</p>

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		<p>While the County understands that USEPA is conducting additional analysis, the fact is that sediment sampling conducted in 2009 indicated that 90% of the PCBs and DDT contamination previously reported for Palos Verdes Shelf (PVS) had disappeared. As a result, USEPA suspended its plan for remediation of the site.</p> <p>Even under the original USEPA plan to remediate PVS, the intention was to only cap certain locations (hot spots) of the contaminated area and to let natural attenuation take care of the remaining role. USEPA estimated it would take about 22-30 years for the contaminants to fully degrade to acceptable levels after the capping was completed.</p> <p>Therefore, despite what the outcome of the USEPA's additional analysis entails for PVS, it would be necessary to allow time to evaluate the potential for natural attenuation in MdR Harbor as the USEPA did for PVS. Given the high cost of sediment remediation for the entire MdR harbor and the environmental damage that such remediation will cause (as recognized by the Regional Board's own substitute environmental documents), any approach, which may result in lower costs and smaller environmental impacts should not be dismissed in a perfunctory fashion.</p>	<p>slope. In addition, deposition of clean sediment at the PV Shelf may have served to reduce the resuspension and limit the amount of bioavailable PCBs and DDT. It would premature to attribute lower levels of PCBs and DDT at PV Shelf strictly to pollutant degradation and natural attenuation, especially when USEPA voiced uncertainty. As such, disregarding the unique conditions of the PV Shelf and application of that principle to Marina del Rey Harbor may not be valid.</p> <p>Marina del Rey Harbor shares limited similarities to a large and dynamic system like the PV Shelf, which experiences greater degrees of sediment erosion, transport, and migration due to its unique topographical features. The relatively shallow depth of Marina del Rey Harbor lends itself to greater disturbance and resulting resuspension given the proximity of bottom sediments to the surface as well as the high amount of disturbance associated with one of the largest private craft marinas in southern California. The Marina is a relatively enclosed and static system with flat sediment beds not lending itself to transport of bulk sediment out of the harbor, which is exacerbated by the fact that the wider harbor with the exception of the entrance channel is seldom if ever dredged.</p> <p>The Sediment Characterization Study conducted in Marina del Rey Harbor showed that in-harbor sediment contamination is not isolated to hotspots but rather spread throughout the harbor. As the County submitted this study to the Los Angeles Water Board, it is unclear</p>

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			<p>why the County appears to be suggesting remediation of hotspots as a viable means of remediation in Marina del Rey Harbor.</p> <p>The TMDL requires load allocations for in-harbor sediments to be attained by 2029. This allows 23 years from the date the original TMDL was adopted for sediment remediation to occur. While the implementation timeline for the TMDL was not based on the U.S. EPA schedule for remediation of the Palos Verdes Shelf, 23 years falls into the time estimate reported by the County of Los Angeles in their comment as allotted for natural attenuation in the PV Shelf. The comment does not include a proposed length of time to allow for natural attenuation.</p>
1.13	County of Los Angeles	<p><b>Response to Regional Board Comment 5.17 County Recommendation:</b></p> <p>The County requests that ERL-based target be maintained for PCBs until the State completes the development of sediment criteria applicable to fish. Appropriate revisions to the TMDL can be made through a reopening of the TMDL upon the adoption of SQO Part 2.</p> <p><b>Reasons For Inadequacy Of Regional Board’s Response to the County’s Original:</b>                      Currently, California has no fish-based sediment criteria. However, the State is working on establishing one through what is referred as SQO Part 2. The State is expected to complete this effort in the next two to three years. In the absence of State standards for fish-based sediment objectives, simply establishing a TMDL target based on an arbitrary number obtained from a study conducted</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 05.17 to Los Angeles Water Board resolution R14-004, which states:</p> <p>The Regional Board disagrees. Use of the revised total PCB sediment target based on the food web bioaccumulation model is consistent with previously adopted toxic pollutant TMDLs in the region, including the Los Angeles and Long Beach Harbors Toxic and Metals TMDLs and the Ballona Creek Estuary Toxic Pollutants TMDL.</p> <p>If monitoring data or special studies indicate that load and waste load allocations will be attained, but fish tissue targets may not be achieved, the Regional</p>



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		<p>elsewhere is inappropriate. It is critical that proper science be used to establish appropriate targets for Mdr Harbor.</p>	<p>Board shall reconsider the TMDL to modify the waste load and load allocations to ensure that the fish tissue targets are attained.</p> <p>Further, the comment incorrectly states that California has no fish-based sediment criteria. Part 1 – Sediment Quality of the State’s Water Quality Control Plan for Enclosed Bays and Estuaries (Part IV.B) includes a narrative water quality objective for sediment quality to protect against “indirect effects” (i.e., impacts due to bioaccumulation in fish): “Pollutants shall not be present in sediments at levels that will bioaccumulate in aquatic life to levels that are harmful to human health.”</p> <p>The numeric target for PCBs is based on peer-reviewed scientific work and is appropriate and necessary to protect the most sensitive beneficial uses in Marina del Rey Harbor.</p>
1.14	County of Los Angeles	<p><b>Response to Regional Board Comment 5.18</b>  <b>Author Recommendation:</b>                      With the added clarification and understanding, the County requests once again that the following language be added to the TMDL:</p> <p><i>After remediation activities of the existing in-harbor sediment are complete, if the harbor is recontaminated as a result of continued discharge of contaminants from the surrounding watershed, additional remediation activities in the harbor shall be the responsibility of all upstream dischargers.</i></p> <p><b>Author Reasons For Inadequacy Of Regional Board’s Response:</b></p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 05.18 to Los Angeles Water Board resolution R14-004, which states:</p> <p>The Regional Board disagrees. Potential recontamination may be contributed from a County-owned area of the watershed. The proposed language would inappropriately remove responsibility from the County for such an impairment.</p> <p>The State Water Board notes that re-contamination of sediments is unlikely given the fact that the waste load</p>

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		<p>As currently proposed, the responsibility for remediating the sediment contamination in MdR Harbor is solely assigned to the County. Of great concern is that once the existing sediment is remediated by the County, there could be potential recontamination due to continuous input from the watershed. In the event that contaminated sediment discharges from the watershed result in a recontamination of the sediment in the harbor after initial remediation is completed, it would be unfair for the County alone to bear the responsibility of a future secondary remediation of recontaminated sediment. The County's reference to "upstream dischargers" in the County's prior comment was meant to <i>include</i> the County. What the County intended for the comment to say is that the responsibility of cleaning recontaminated sediment should be borne by all upstream jurisdictions and other responsible parties, including the City of Los Angeles, Culver City, Caltrans, and the County. This request is consistent with the approach used in the Machado Lake Toxics TMDL, which was adopted by the Regional Board in 2010 and subsequently approved by the State Water Board and USEPA.</p>	<p>allocations for upstream dischargers must be met four to eight years prior to the sediment remediation deadline and that there will be monitoring in place to ensure compliance. In addition, if necessary, the Los Angeles Water Board can reconsider the TMDL to assign responsibility for remediation of re-contaminated sediments to applicable upstream jurisdictions and other responsible parties based on the results of ongoing compliance monitoring.</p>
1.15	County of Los Angeles	<p><b>Response to Regional Board Comment 5.19 County Recommendation:</b> The County respectfully requests that the State Board reject the Regional Board's Substitute Environmental Document and remand the revised TMDL back the Regional Board to correct the deficiencies.</p> <p><b>Reasons For Inadequacy Of Regional Board's Response to the County's Original Comment:</b> The Regional Board's response contains several factual and legal inaccuracies and is internally contradictory.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment.</p> <p>The Los Angeles Water Board did not assume its own conclusion when it found that other Program-level alternatives are not feasible because they would allow toxic impairment of the waters in Marina Del Rey Harbor to continue. The Los Angeles Water Board has no discretion to establish a TMDL that would not meet water quality standards, and the numeric targets for sediment included in the preferred Program-level</p>

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		<p>The Regional Board states that less impactful alternatives "are not feasible because they would allow toxic impairment of the waters in Marina Del Rey Harbor to continue, in contradiction of the project purpose." Yet, the Regional Board is merely assuming its own conclusion – that its extremely low limits for sediment contamination will prevent more environmental damage than will be caused by a full dredging or capping of the harbor sediment. However, the Regional Board has neither conducted nor presented any analysis to demonstrate that the benefit[s] of the project outweigh the environmental costs. In essence, the Regional Board has assumed as a given that any amount of environmental harm, no matter how massive, is justified. As is discussed in the above comments, this is not a case where the clear undisputed science demonstrates a severe level of contamination that must be remediated. Instead, this is a situation where there has been only preliminary, non-site specific analysis, and more studies are needed to determine the true extent and scope of the problem.</p> <p>The Regional Board states that "The SED addresses the feasibility of mitigation measures to lessen the environmental impacts of the project in Chapters 6.2 and 7." However, the only mention of feasibility is the statement in Chapter 6.2 that "These agencies have the ability to implement these mitigation measures, can and should implement these mitigation measures, and are required under CEQA to implement mitigation measures unless mitigation measures are deemed infeasible through specific considerations." This sentence, which is repeated many times in the chapter, is obviously not an analysis of</p>	<p>alternative are required to meet water quality standards.</p> <p>The Los Angeles Water Board has not assumed that “<i>any amount of environmental harm, no matter how massive, is justified.</i>” As detailed in the Los Angeles Water Board’s response to this comment, the potential environmental impacts and mitigation measures have been extensively analyzed. The Los Angeles Water Board has determined, and the State Water Board concurs, that the environmental benefits of complying with the TMDL outweigh the potential impacts in accordance with CEQA Guidelines section 15093. Please see the relevant portion of the Los Angeles Water Board’s response to comment 05.19 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">The SED analyzes alternatives to the proposed project in Chapter 4, and concludes that Alternatives 2 and 3 are not feasible because they would allow toxic impairment of the waters in Marina Del Rey Harbor to continue, in contradiction of the project purpose.</p> <p>The quoted text in this comment regarding the feasibility of mitigation measures is not presented as a finding of feasibility by the Regional Board. It is intended to clarify that responsible agencies will <i>also</i> analyze feasibility of mitigation measures at the <i>project level</i>. The Los Angeles Water Board’s response to comment 05.19 to Los Angeles Water Board resolution R14-004 states:</p> <p style="padding-left: 40px;">The feasibility of mitigation measures for various</p>

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		<p>or finding of feasibility. In fact, it is just the opposite – a recognition that there may not be feasible mitigation measures.</p> <p>The Regional Board's response is internally contradictory in that it attempts to demonstrate the limited impact of dredging or capping of sediments by explaining that MdR is a particularly fragile ecosystem, more likely to be damaged by such activities: "in fact, the relatively shallow depths in Marina del Rey Harbor lend themselves to greater disturbance and resulting resuspension given the proximity of bottom sediments to the surface and the high amount of disturbance associated with one of the largest private craft marinas in southern California. The Marina is a relatively enclosed and static system, with flat sediment beds, not lending itself to transport of sediment out of the harbor." <i>See</i> SED p. 107.</p>	<p>methods of compliance will also be analyzed at the project level through independent environmental review (Pub. Res. C. § 21159.2) which is beyond the scope of analysis that the Regional Board is required to take (Pub. Res. C. § 21159(d)). The Regional Board has analyzed the reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts of the foreseeable methods of complying with the TMDL... These mitigation measures might include limiting the extent and duration of dredging; conducting dredging in portions and phases to allow species to reestablish, recover, and propagate; and using sediment curtains to reduce sediment migration to habitat adjacent to a current dredge site.</p> <p>The State Board agrees that these mitigation measures are reasonably foreseeable.</p> <p>The following portion of the Los Angeles Water Board's response to comment 05.19 is not internally contradictory:</p> <p>Furthermore, the SED examined worst case impacts due to dredging, when in fact, the relatively shallow depths in Marina del Rey Harbor lend themselves to greater disturbance and resulting re-suspension given the proximity of bottom sediments to the surface and the high amount of disturbance associated with one of the largest private craft marinas in southern California. The Marina is a relatively enclosed and static system, with flat sediment beds, not lending itself to transport of</p>

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			<p>sediment out of the harbor. This is exacerbated by the fact that the wider harbor with the exception of the entrance channel is seldom if ever dredged. Therefore, the impacts from dredging are likely to be limited and temporary.</p> <p>This portion of the response was intended to clarify that sediment re-suspension due to dredging would be in addition to sediment re-suspension already occurring in the harbor due to ongoing marina activities. It was also intended to clarify that this additional sediment re-suspension would likely remain inside the harbor. The previous portion of the response discussed potential measures to mitigate impacts due to this additional in-harbor sediment re-suspension. The response is not contradictory.</p> <p>This response by the Los Angeles Water Board as well as the SED are not intended, as this comment asserts, to demonstrate a limited environmental impact due to dredging or capping of sediments. On the contrary, the SED finds that this is a potentially significant impact, and in accordance with Pub. Resources Code, §21159(a), identifies mitigation measures which could lessen or avoid these impacts. However, implementation of these mitigation measures are within the jurisdiction of the responsible agencies listed in this TMDL (Title 14, California Code of Regulations, Section 15091(a)(2)). These agencies have the ability to implement these mitigation measures, can and should implement these mitigation measures, and are required under CEQA to implement mitigation measures unless mitigation measures are deemed infeasible through specific considerations (Title 14, California Code of Regulations, Section 15091(a)(3)).</p>

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			<p>The following statement included in the comment is incorrect:</p> <p style="text-align: center;"><i>...this is not a case where the clear undisputed science demonstrates a severe level of contamination that must be remediated. Instead, this a situation where there has been only preliminary, non-site specific analysis, and more studies are needed to determine the extent and scope of the problem.</i></p> <p>The TMDL is based on site-specific data, some of which was collected and submitted to the Los Angeles Water Board by the County. Data identifying the nature and extent of the impairments are included in the TMDL and supporting record, and the analysis of the sources of toxic pollutants to Marina del Rey Harbor is not preliminary. The Clean Water Act §303(d) requires these pollutants to be identified as impairing Marina del Rey Harbor and further requires the establishment of TMDLs to address these impairments.</p>
1.16	County of Los Angeles	<p><b>Response to Regional Board Comment 5.21 County Recommendation:</b></p> <p>The County requests the removal of lead allocations and associated requirements from the TMDL.</p> <p><b>Reasons For Inadequacy Of Regional Board's Response to the County's Original Comment:</b>                      The County respectfully disagrees with Regional Board's response for many reasons. First, addressing a watershed holistically should not necessarily require developing a</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the Los Angeles Water Board's response to comment 05.21 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="text-align: center;">The proposed TMDL addresses all constituents on a watershed basis. To ensure continuity within the TMDL as well as to address the watershed holistically, it is appropriate to apply the numeric</p>

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		<p>TMDL for a waterbody that is not impaired. For example, if data shows that only one reach of a river is impaired for a certain constituent, a TMDL can be developed to address that particular reach and not the entire network of streams in the watershed. It is the County’s understanding that this has been the case for the TMDLs developed in the Los Angeles Region as well as across the State. Second, if the Regional Board’s intention is to monitor lead in Mdr Harbor, then that objective can be accomplished through the receiving water monitoring being conducted as water monitoring being conducted as part of the MS4 permit without requiring a more expensive monitoring program for a constituent that is not of concern at this time.</p> <p>The County continues to believe that lead associated allocations and requirements for the front basins of the harbor are inappropriate and should be removed from the TMDL.</p>	<p>target for lead in sediment to the entirety of Marina del Rey Harbor.</p> <p>The TMDL addresses seven sediment contaminants, six of which are already on or have been identified as requiring placement on the 303(d) list due to impairments in both the front and back basins. The previous listing of only the back basins as impaired on the 303(d) list was based on the available data at the time of listing and development of the original TMDL. Segmenting the harbor in this fashion is no longer justified based on the impairments identified in the front basins. Furthermore, the Clean Water Act §303(d)(3) states that, “[f]or the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load ... at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife.”</p>
1.17	County of Los Angeles	<p><b>Response to Regional Board Comment 5.22 County Recommendation:</b></p> <p>The County requests that the existing TMDL reopener language for sediment be broadened enough to address all technical and compliance schedule issues in the TMDL that might arise. The County recommends the following revision to the proposed reopener language for in-harbor sediment (with underlines indicating additions and strikethroughs indicating deletions):</p> <p><i>The TMDL may be reconsidered to revise <u>(a)</u> the implementation schedule in order to ensure that pollutant source are controlled and a suitable location for contaminated sediment disposal is available prior to</i></p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see relevant portion of the Los Angeles Water Board’s response to comment 03.7 to Los Angeles Water Board resolution R14-004, which states:</p> <p>The TMDL can be reconsidered at any time. Setting a specific date for such a reconsideration is premature at this time as the appropriate timing of a potential revision is unknown at this time. Should a revision of the TMDL be necessary, scheduling will be determined by the Regional Board with the input of stakeholders.</p>

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		<p><i>remediation of contaminated sediments if the <del>county has</del> responsible parties-have made a good faith effort to plan, fund, and permit-sediment remediation activities; and (b) the waste load-allocations and load allocations and monitoring programs based on the findings of new studies and data.</i></p> <p><b>Reasons For Inadequacy Of Regional Board's Response to the County's Original Comment:</b> With the understanding that the Regional Board is willing to re-consider the TMDL at <i>any time</i>, the County would like to suggest that the existing reopener language pertaining to the in-harbor sediment be expanded to be broad enough to consider any of the pertinent issues in the TMDL as new information is gained.</p> <p>The re-opener language in the TMDL, as currently written, only allows reevaluation of the final compliance timeline for in-harbor sediment. In addition to the potential re-consideration of the timeline, other elements in the TMDL, including TMDL load allocations and monitoring programs, should also be open to re-evaluation and revision during a re-opener. The County expects that new information will potentially be available in the near future that would warrant the need to re-open the TMDL. First, the State Water Board is working on SQO Part 2, which will establish sediment objectives for indirect effects. The State is expected to complete this in the next two to three years. Second, the stakeholders are required to complete a stressor identification study by December 2016, which will provide valuable information on the causes of sediment toxicity and benthic disturbance in the harbor. Third, further information will be obtained on the</p>	<p>That the language proposed for alteration is specific to a reconsideration of the implementation schedule for contaminated sediments, does not preclude the reconsideration of the TMDL for other reasons. The requested language is unnecessary as the Los Angeles Water Board may reconsider the TMDL at any time based on new information and has indicated its intention to do so when appropriate.</p>

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		<p>biodegradability of the contaminants of concern based on the studies being conducted in the Palos Verdes Shelf area by the USEPA.</p> <p>Consideration of each of the pieces of information just described would help improve the TMDL, both scientifically and also from a technical basis. The County believes that the findings of these studies should be taken into account and, up on completion, should trigger a TMDL re-opener.</p>	
2.1	City of Los Angeles	<p>The City of Los Angeles, Bureau of Sanitation (Bureau) appreciates the opportunity to provide technical comments on the proposed amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to revise the Total Maximum Daily Load (TMDL) for Marina del Rey Harbor Toxic Pollutants (Taxies TMDL). While the Bureau appreciates and thanks Regional Board staff for the efforts in developing the Basin Plan and addressing specific Bureau concerns, the Bureau continues to have concern with a technical issue that was included in the Bureau's January 15, 2014 comment letter to the Regional Board. As described herein, the response provided by the Regional Board did not adequately address this concern (the Regional Board indicated that the timeframe is appropriate) and the Bureau is therefore submitting this comment and background information that was presented at the Regional Board Hearing to the State Board for consideration.</p>	Comment noted.
2.2	City of Los Angeles	<p><b>ADDITIONAL TIME IS NEEDED FOR COMPLIANCE IN BACK BASIN E</b></p> <p>Responsible parties have been developing plans and implementing best management practices (BMPs) to</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see relevant portion of the Los Angeles Water Board's response to comment 03.4 to Los Angeles Water Board</p>

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		<p>address stormwater discharges to the back basins of the marina since the inception of the TMDL in 2006. The continued implementation of originally planned BMPs, in conjunction with the implementation of new projects under the MS4 permit, has created a need for additional time to complete the projects and assess the resulting water quality improvements. The compliance schedule currently proposed in the Basin Plan Amendment for the back basins does not allow sufficient time to reasonably assess the effectiveness of implemented BMPs and propose additional management techniques to address any remaining issues.</p> <p>Background:</p> <p>The Bureau's strategy for Marina del Rey is based on an integrated water resources approach targeting compliance with all Marina del Rey TMDLs (Toxics, Bacteria, and Debris TMDLs) in a comprehensive and integrated manner by the year 2021.</p> <p>We submitted our Implementation Plan for the Toxics TMDL in 2011, with a request for approval of the Integrated Water Resource (IWR) approach and a compliance date of 2021 as provided by the 2006 TMDL. However, that extension was not granted by Regional Board, thereby requiring a final compliance date of 2016.</p> <p>The flagship project in the area is the County's Oxford Basin Project, which treats most pollutants and covers most of the City's watershed. This project is slated to be completed in 2015-16.</p>	<p>resolution R14-004, which states:</p> <p>The timeline to achieve the TMDL is appropriate given the eight years that have passed since the original TMDL became effective and the relatively small size of the area draining to the back basins (1.42 square miles). The proposed TMDL revision already extends the initial TMDL compliance date by two years in recognition of the projects already underway in the watershed and the additional structural BMPs that will need to be implemented in light of new monitoring data. There are no new projects required by the MS4 permit as implied by this comment.</p> <p>Two compliance options were available for MS4 permittees including Caltrans to meet the original TMDL. The two options differed based on whether or not an Integrated Water Resources (IWR) approach was undertaken. Implementation plans submitted by the responsible parties did not show sufficient evidence of an IWR approach; therefore, the shorter implementation timeline, requiring the TMDL to be met by March 22, 2016 (10 years after the TMDL became effective) is applicable. As stated in the comment, the Los Angeles Water Board has provided two additional years to implement measures to achieve the sediment allocations applicable to MS4 discharges to the back basins of Marina del Rey Harbor in the implementation schedule of the revised TMDL, bringing the final deadline to 2018.</p> <p>The TMDL has been in effect since March 22, 2006.</p>

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		<p>Prior to and during construction, the City complements the large Oxford Basin Project by concentrating on distributed BMPs and SUSMP, Institutional Measures (increase street sweeping, source control, etc.), 293 catch basin inserts, and ensuring developers comply with Low Impact Development requirements. Ideally, the extent of treatment of City pollutants will be known by 2016-17 through monitoring after completion of the Oxford Basin Project. This will also give us time to monitor and analyze the impacts of distributed and institutional measures.</p> <p>Our current planning process is now incorporated into the Enhanced Watershed Management Program (EWMP) for the Marina del Rey watershed. Development of the EWMP will go hand in hand with an analysis of the latest toxic TMDL monitoring data (2010-2013) and other constituents, and an evaluation of the need for additional WQ projects. The City is committed to identify specific additional projects, located in the City, if the EWMP process indicates there is a need for those projects to meet the WLAs. Accordingly, EWMP project implementation would start by 2016, i.e., after approval of the Marina del Rey EWMP by the Regional. Board.</p> <p>The currently proposed new deadline for Back Basin E is 2018, leaving only 2 years to complete projects identified by the EWMP in order to assure compliance. However, the project cycle for the City typically lasts 4 years to meet established protocols and timelines for design, bid and award, and construction of structural projects. As mentioned earlier, the planning milestone for comprehensive approach to all TMDLs in Basin E is centered around 2021 and this compliance date was</p>	<p>Participation in an Enhanced Watershed Management Program under the Los Angeles County MS4 Permit is not intended to provide justification for the extension of an implementation schedule in a TMDL for which implementation plans have previously been submitted to the Regional Board.</p>

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		<p>requested in our submittal of the 2011 IWR Implementation Plan for the Toxics TMDL.</p> <p><b><i>Requested Action: For Back Basin E, the compliance dates for the 50 percent interim and the final targets be extended from 2016 to 2018 and from 2018 to 2021, respectively.</i></b></p>	
3.1	Heal the Bay and Los Angeles Waterkeeper	In general, Heal the Bay and Waterkeeper supports the Mdr TMDL adopted by the Los Angeles Regional Water Quality Control Board on February 6, 2014 (Resolution No. R14-004). We believe the implementation of the TMDL will lead to improvements in the waterway and ultimately lead to water quality standards attainment.	Comment noted.
3.2	Heal the Bay and Los Angeles Waterkeeper	In particular, we strongly support the inclusion of dissolved copper water column load allocations in the Mdr TMDL. Marina del Rey Harbor is the largest recreational marina in the County and has been identified as the one of the most toxic recreational harbors in California. The Toxicant Identification Evaluation (TIE) study conducted for California marinas concluded that copper is the likely cause of toxicity in marina waters. In addition, available water quality data and modeling demonstrate that leaching of antifouling copper paint from boats is the leading source of copper. Thus, it is imperative the Mdr TMDL include a load allocation for dissolved copper from copper-based boat hull paints. Further, the 10-year dissolved copper load allocation implementation schedule set forth in the TMDL is realistic and achievable for boat owners; it follows boat hull maintenance schedules and gives boat owners adequate time to comply with Mdr TMDL requirements. To reduce copper impairments in the Marina del Rey Harbor, the State Water Board should approve the TMDL with	Comment noted.

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		dissolved copper load allocations and the dissolved copper implementation schedule adopted by the Los Angeles Regional Water Quality Control Board on February 6, 2014.	
3.3	Heal the Bay and Los Angeles Waterkeeper	In addition, we support the expansion of geographic extent and inclusion of in-harbor load allocations for metals and organic compounds in sediments in the Mdr TMDL. Studies completed following the 2005 adoption of the Mdr TMDL indicate water column and sediment impairments throughout Marina del Rey Harbor. Data collected indicates impairments are not solely confined to the back basins (Basins D, E, and F) or hotspots as previously perceived, but also extend to the front basins (Basins A, B, C, G, and H). Moreover, the inclusion of in-harbor sediment load allocations ensures timely action to remediate or remove impaired sediment is taken by Los Angeles County. To attain sediment quality objectives in all reaches of Marina del Rey Harbor, the State Water Board should approve the Mdr TMDL as adopted by the Regional Board.	Comment noted.
3.4	Heal the Bay and Los Angeles Waterkeeper	Although we are supportive of the Mdr TMDL adopted by the Regional Board on February 6, 2014, we believe that certain aspects of the TMDL should be revised to better protect the waters of Marina del Rey Harbor. Specifically, the Mdr TMDL incorporates a new alternative compliance mechanism allowing dischargers to demonstrate compliance with waste load allocations by providing “quantitative demonstrations that control measures and best management practices will achieve” waste load allocations and water quality-based effluent limits consistent with the TMDL’s implementation schedule and implementing these BMPs and control measures subject to Executive Officer approval. We feel	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 2.5 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The provisions providing compliance demonstration through “<i>quantitative demonstrations that control measures and best management practices will achieve WLAs and WQBELs consistent with implementation schedules for the TMDLs and subject to Executive Office approval</i>” allow for appropriate permitting</p>

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		<p>this proposed compliance mechanism is improper and unjustified and should be removed. The act of installing BMPs and implementing programs cannot be used as a measure for compliance with water quality standards, effluent limits, and TMDLs. Providing quantitative demonstrations of BMP effectiveness and/or installation of Regional Board-approved BMPs does not ensure that TMDL waste load allocations and water quality-based effluent limits are actually met. Further, the implementation of these BMPs and control measures in itself is insufficient to show water quality-based effluent limits and waste load allocations are met. The “reasonable assurance analysis” conducted under the LA MS4 Permit and endorsed by the Regional Board as evident in the Response to Comments on the Draft Mdr TMDL does not meet the requirements of the EPA 2002 and 2010 guidance on incorporation of TMDL waste load allocations into storm water NPDES permits. <i>See</i> NRDC, Los Angeles Waterkeeper and Heal the Bay Petition to the State Board for Review of the 2012 Los Angeles County MS4 Permit at 28-31.</p>	<p>flexibility and are consistent with the Regional Board’s undertakings in many TMDLs and permits.</p> <p>Required monitoring will demonstrate if the WLA and targets are actually met and if they are not met according to the TMDL schedule, the Regional Board has a variety of options for recourse.</p> <p>Provisions to address the failure to meet targets or allocations may also be written into the applicable permits.</p> <p>The evidence to support its decision to allow the alternative compliance demonstration must be provided by the discharger or responsible party prior to Executive Officer approval or no such approval will be made.</p> <p>The TMDL establishes the WLAs that the permittees must achieve. The WLAs are supported by findings and evidence in the record of the TMDL and the proposed amendment. The proposed amendment provides alternative methods for demonstrating compliance with the WLAs, consistent with federal regulation and the Los Angeles County MS4 Permit. The commenter appears to be suggesting that the Board may not provide alternative compliance methods without a demonstration that the alternative methods, in this case, control measures and BMPs, will in fact work to achieve the WLAs. Such a demonstration is not necessary at this stage. The permittees must demonstrate, if they propose to use such a compliance demonstration approach, that the</p>

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			<p>control measures and BMPs have a reasonable assurance of achieving the WLAs. The permittees are subject to the Los Angeles County MS4 Permit which provides for various methods to demonstrate compliance with water quality standards, including use of control measures and BMPs that are supported by a “Reasonable Assurance Analysis”. The TMDLs are implemented, in part, through the Los Angeles County MS4 Permit. The proposed amendments to the TMDLs clarify that the permittees may demonstrate compliance with the WLAs in a manner consistent with the provisions of the Los Angeles County MS4 Permit.</p> <p>The LA County MS4 Permit contains sufficient provisions to ensure that BMP implementation is evaluated and adjusted as necessary to ensure adequate performance. Further, the State Water Board notes that the LA County MS4 Permit only provides that compliance may be demonstrated through BMP implementation (where supported by a reasonable assurance analysis) for (1) interim water quality-based effluent limitations and associated receiving water limitations, and (2) final water quality-based effluent limitations and associated receiving water limitations only where the permittee(s) has retained all non-storm water and the volume of storm water from the 85<sup>th</sup> percentile 24-hour storm for the contributing drainage area. Where this retention volume is not achieved, compliance with final water quality-based effluent limitations and associated receiving water limitations must be demonstrated with monitoring data.</p> <p>The Regional Water Board may reconsider the TMDL, and may reopen the permit, in the future as necessary if WLAs and corresponding permit limitations are not attained.</p>

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			<p>As noted, the commenter and others filed petitions requesting review by the State Water Board of the Los Angeles County MS4 Permit. The action before the State Water Board is the approval of this revision to the TMDL, not the consideration of the LA County MS4 Permit. The State Water Board is in the process of reviewing the petitions.</p>
3.5	Heal the Bay and Los Angeles Waterkeeper	<p>Additionally, we believe a numeric target for toxicity and an associated waste load allocation should be included in the MdR TMDL. To meet narrative objectives set forth in the Basin Plan for toxicity, the MdR TMDL should include a numeric target for toxicity, similar to that seen in the Calleguas Creek Watershed Toxicity TMDL.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 2.11 to Los Angeles Water Board resolution R14-004, which states:</p> <p>As stated in the proposed Basin Plan Amendment, “this TMDL implicitly includes sediment toxicity and benthic community targets by its application of the EBE Plan Part 1.” The categories designated in the EBE Plan Part 1 as Unimpacted and Likely Unimpacted are based on multiple lines of evidence. The thresholds established in the EBE Plan Part 1 are based on statistical significance and magnitude of the effect.</p> <p>Monitoring requirements in the proposed TMDL will ensure that toxicity water quality objectives are met in Marina del Rey Harbor. Should monitoring results indicate toxicity water quality objectives will not be met, the TMDL will be adjusted to ensure water quality objectives are attained.</p> <p>Sediment toxicity testing is required as part of the suite of analyses comprising the sediment triad</p>



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			analysis. Two toxicity tests are required to meet the sediment monitoring requirements of the proposed TMDL, with one of these utilizing <i>L. plumulosus</i> as the test organism. Sediment toxicity samples shall also be collected annually addition to, and in between, the sediment triad sampling events to evaluate trends and track TMDL compliance.
3.6	Heal the Bay and Los Angeles Waterkeeper	In conclusion, we believe the Marina del Rey Harbor Toxic Pollutant Total Maximum Daily Load adopted by the Regional Board is a step in the right direction to improve water quality in the Marina del Rey Harbor. The inclusion of load allocations for dissolved copper, in-harbor sediment load allocations for metals and organics, as well as the expansion of geographic extent will help protect beneficial uses in the Harbor. However, we feel the TMDL could be strengthened by removing the new alternative compliance mechanism for waste load allocations and adding a numeric target for toxicity.	Comment noted.
4.1	General Stakeholders	<p>The Board Did Not Meet Noticing Requirements</p> <p>The Board claims that it mailed notices of the proposed regulation to boaters in Marina del Rey. Many boaters did not receive a copy of the Board’s notice and were denied an opportunity to make timely comments on the regulations. This is a denial of due process.</p> <p>The Notice itself is defective on its face and legally deficient because it referred only to “technical changes” to the TMDL and did not warn boaters, the anchorages or other interested parties that the Board intended to hold boaters and anchorages responsible for pollutants in the Marina. We didn’t even know there was a problem with copper in the marina, or that we were going to be asked to</p>	<p>The Los Angeles Water Board made efforts beyond the minimum legal requirements to notify boaters and allow them an opportunity to comment on the proposed revisions to the TMDL. The Los Angeles Water Board was successful in providing actual notice to many interested parties, which is apparent given that several of the commenters who submitted this comment made timely written comments to the Los Angeles Water Board and provided oral comments at the February 6, 2014 hearing. These comments are included in the administrative record, were considered by the Los Angeles Water Board, and were responded to by the Los Angeles Water Board prior to its action to adopt the revisions to the TMDL.</p> <p>Requirements for notification of the Los Angeles Water Board</p>

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		<p>both fix and pay for it.</p> <p>By failing to ensure that affected parties were adequately and timely notified as to the true nature of the Amendment, the Board denied all of us the due process required by law. The LA Board violated the State Board’s Continuing Planning Process mandate to “involve stakeholders” in developing the TMDL Amendment, and it effectively denied all interested parties with the opportunity to have their voices heard. The Board’s actions and failures are wrong.</p>	<p>action were met on November 5, 2013 through publishing a notice of hearing and opportunity to comment in the Los Angeles Times as well as distribution of the notice to Los Angeles Water Board electronic and postal service mailing lists. The draft TMDL and supporting documents were posted to the Los Angeles Water Board website and notice was distributed to approximately 1000 interested persons on the Regional Board’s mailing lists.</p> <p>Additional efforts were made by Los Angeles Water Board staff to contact boaters and anchorages directly. These efforts included the direct mailing of an informational flyer to 4,337 boaters relaying information regarding the dissolved copper impairment and the proposed means of addressing this impairment in the TMDL. The mailing list for the flyer, containing boaters’ names and addresses, was provided to the Los Angeles Water Board by the County of Los Angeles, Department of Beaches and Harbors. In addition, Los Angeles Water Board staff presented detailed information about the TMDL at two meetings held and recorded by the Department of Beaches and Harbors at Burton Chase Park on December 7 and 11, 2013 to discuss the proposed TMDL revisions with boaters. The Department of Beaches and Harbors e-mailed notice of these meetings to their lessees and dockmasters.</p> <p>The Notice of Hearing, supplemental flyer, and staff presentations all contained a link to the Los Angeles Water Board’s web page, which contained detailed information about the copper impairment and assignment of responsible parties, as well staff contact information if interested persons had any questions.</p> <p>The staff report for the original TMDL, which became</p>

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			<p>effective March 22, 2006, included discussion of a potential dissolved copper impairment in the water column. The staff report included preliminary modeling investigating the contribution antifouling paints to the potential water column impairment. Both this document and the subsequent monitoring reports confirming the impairment were available to the public prior to beginning the revision process of this TMDL.</p>
4.2	General Stakeholders	<p>The proposal has been pushed through with an attempt to stifle those who are most affected and who disagree.</p> <p>The meeting was held at a location most inconvenient to the Marina Del Rey boaters and business, as a method of suppressing attendance and any vocal opposition.</p> <p>The Regional Board did not engage in meaningful dialogue, and speakers' concerns were not seriously considered.</p> <p>Time to speak before the Regional Board was limited to one minute, and because of the time restriction speakers were not able to make a number of objections that they wanted to make.</p>	<p>The TMDL was considered at the Los Angeles Water Board's monthly meeting on February 6, 2014. The location of the meeting was the Metropolitan Water District of Southern California, 700 North Alameda Street, Los Angeles, CA 90012, adjacent to Union Station, the central public transportation hub of the Los Angeles metropolitan area. This location is approximately 18 miles from Marina del Rey Harbor. There are numerous public transportation options available from the vicinity of the Marina to the meeting location, including LADOT's Commuter Express, Santa Monica's Big Blue Bus, and the Expo Line. There were 16 other items on the agenda that were not specific to Marina del Rey, so the meeting was held at a central location in downtown Los Angeles. This is one of two locations where the majority of meetings of the Los Angeles Water Board are held – the other is located in Simi Valley, which is approximately 40 miles from the Marina. Because many people would be traveling from Marina del Rey to the meeting downtown, the Los Angeles Water Board waited to hear the proposed TMDL revision (Item 16) until at least 2 PM and had noted this fact on the January 23, 2014 Notice of Public Meeting and agenda.</p> <p>As stated in response to comment 4.1, the State Water Board</p>

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			<p>finds that the Los Angeles Water Board met all noticing requirements specified by California Code of Regulations §11346.4. Los Angeles Water Board staff engaged in significant additional outreach to engage with the Marina del Rey Harbor community. The public had the opportunity to voice comments by submitting written comments to the Los Angeles Water Board, and presenting oral comments at the public meeting on February 6, 2014. The public also had prior opportunity to share comments and discuss the TMDL with Los Angeles Water Board staff during two outreach meetings with the boating community and two outreach meetings with anchorage owners.</p> <p>Members of the public requesting additional time to speak at the meeting of the Los Angeles Water Board were directed through the Notice of Hearing to make such a request to the Los Angeles Water Board in advance of the hearing. All speakers requesting additional time in advance of the Board meeting were granted more than the one-minute allotment. The one-minute time allotment for general comments was established to ensure that all those present and wishing to speak would have time to be heard by the Board.</p> <p>Many of the comments raised by members of the public had previously been raised in written comments, and had been considered by the Los Angeles Water Board in advance of the meeting. Responses to those comments were provided in the written response to comments prepared by the Los Angeles Water Board. At the hearing, the Los Angeles Water Board heard over three hours of testimony and spent another hour discussing the testimony and asking questions of staff and the County of Los Angeles in order to make an informed decision on the item after careful deliberation.</p>

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4.3	General Stakeholders	<p>The Board has no authority to name “Responsible Parties” in a TMDL.</p> <p>The Los Angeles Board is not authorized by State or federal law to designate anchorages and boaters as responsible for copper pollutants in the Marina in a TMDL Amendment. The Los Angeles Board overstepped its authority and is inviting litigation if this goes forward. Anchorages do not discharge to the marina.</p> <p>Questions of liability should be established by an impartial judge, not a regulatory agency in the context of a TMDL Amendment. What’s most troubling is that an unelected, unaccountable board running rampant over the rights of citizens, over reaching to impose liability in TMDL and create for itself the ability to order remedial action, require permits, impose fines on citizens, harm our local economy and effectively take away our property.</p> <p>This action would be improper and unlawful. This proposal violates both the Clean Water Act and CERCLA. “Responsible parties” is a term of art under CERCLA, a federal statute designed to allocate liability for clean-up of past contamination. This cannot be implemented in a TMDL. A TMDL is an informational document that establishes goals. It is not a document that can assign liability.</p>	<p>The relevant portion of the Los Angeles Water Board’s response to comment 14.9 to Los Angeles Water Board Resolution R14-004, states:</p> <p style="padding-left: 40px;">It is both fair and legal to assign responsibility for reducing copper in Marina del Rey Harbor to boat owners. Based on the source analysis and linkage analysis, the major source of dissolved copper in the harbor is copper from boat paint; therefore, this load allocation must be assigned to achieve the TMDL. Furthermore, the copper discharged from antifouling paints is a “waste” pursuant to California Water Code section 13050(d). According to CWC section 13263(g), “All discharges of waste into the waters of the State are privileges, not rights.” For a full discussion of the legal authority to regulate discharges of copper from hull paints, see Section III of the Technical Report for the TMDL for Dissolved Copper in Shelter Island Yacht Basin included as a reference to the Marina del Rey Toxics TMDL Staff Report.</p> <p>The Los Angeles Water Board’s legal authority to identify responsible parties is found in the California Water Code, Division 7, Water Quality and the federal Clean Water Act.</p> <p>The Los Angeles Water Board has the discretion to hold anchorages accountable for discharges of waste which occur or occurred within the marina leasehold based on three criteria: (1) status as owner or operator of the marina facility on which an activity occurs that results in a discharge of waste; (2) knowledge of the activity causing the discharge; and (3) the ability to control the activity. The Marina del Rey</p>

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			<p>Harbor anchorages meet all three of these criteria.</p> <p>The anchorages congregate boats and thereby cause or contribute to the discharge of copper from the large number of boat hulls in the harbor.</p> <p>The anchorages have knowledge of the copper discharges from antifouling paint and have the ability to control discharges of copper to the harbor. Anchorages exercise control and enforcement over boat owners and their discharges by way of conditional lease or license agreements with owners of boats moored within the anchorage leasehold. The conditions written into these contract agreements are the key to the anchorage's legal authority to exercise control over residual copper discharges from boat hulls within the leasehold. By way of these conditions, the anchorages can control the number of moored boats, the types of hull coatings used, and hull cleaning activities allowed within the leasehold.</p> <p>Persons owning boats moored in Marina del Rey Harbor are responsible for discharges of copper waste because hull coating leachate containing copper is continuously generated whenever a vessel hull is exposed to water.</p> <p>A TMDL is a water quality control planning document, the purpose of which is to identify the loading capacity of a waterbody relative to a specific pollutant(s) and determine the necessary reductions in pollutant loading necessary to achieve water quality objectives given the waterbody's loading capacity. As a planning document, it is the intent that the State uses its water quality control authorities to ensure that the necessary pollutant load reductions are achieved such that water quality standards are achieved. Therefore, to effectively</p>

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			implement the TMDL it is necessary to identify those entities who are discharging the pollutant(s) to the waterbody.
4.4	General Stakeholders	<p>Other anchorages and non-Marina del Rey boaters in the state are not being subjected to this type of regulation.</p> <p>The Board is misusing its power to impose an unfair regulation that is more costly, more burdensome, and much harsher than what was approved for San Diego's Shelter Island, which is voluntary and with much longer compliance periods.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's response to this comment. Please see the relevant portion of the Los Angeles Water Board's response to comment 08.3 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">Copper pollution in marinas from antifouling paints is acknowledged as a statewide and nationwide concern and the Boating community in Marina del Rey has been aware of this issue for some time. There are two existing TMDLs addressing copper loading from antifouling paints in California: the Shelter Island Yacht Basin TMDL and the Newport Bay TMDL. There was also a discussion of the loading of copper from hull paint to the Marina del Rey Harbor in the original TMDL adopted in 2005. The Staff Report supporting the TMDL states, "There will be no load allocations assigned to boat discharges at this time, as contribution from water column concentrations to sediment loading cannot be quantified. Upon completion of a study designed to obtain such information, the TMDL will be revised as necessary." In addition, the Department of Pesticide Regulation conducted a statewide study of copper in marinas in 2009 and presented its results to the boating community in Marina del Rey.</p> <p>The Marina del Rey Copper TMDL is not more costly, burdensome, or harsh than what was approved for San</p>

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			<p>Diego's Shelter Island. The Marina del Rey Copper TMDL is the same as the Shelter Island Yacht Basin TMDL in every respect except for the length of the implementation schedule:</p> <ul style="list-style-type: none"><li>(1) Both TMDLs name individual boat owners and anchorages as responsible parties</li><li>(2) Both TMDLs identify several potential regulatory mechanisms to implement the TMDL. The San Diego Water Board has not yet adopted a regulatory mechanism to implement the Shelter Island TMDL, so implementation is currently voluntary. The Marina del Rey TMDL allows for a voluntary implementation approach as well. If timely progress is made by boat owners, anchorages, and the County of Los Angeles to achieve copper reductions, the voluntary program may be sufficient. If timely progress is not made, the Los Angeles Water Board will develop an enforceable program to ensure the targets set by the TMDL are met. In response to feedback heard during stakeholder meetings, the Los Angeles Water Board added a deadline of two years after the effective date of the TMDL to develop a program to implement LAs for discharges of copper from boats.</li></ul> <p>The State Water Board also agrees that the extensive work conducted by the Port of San Diego and others to implement the Shelter Island Yacht Basin TMDL can be applied to implementation of the Marina del Rey TMDL, including lessons learned, availability of alternative paints, and development of new BMPs. Use</p>



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			of this information will reduce the time needed to implement the TMDL.
4.5	General Stakeholders	The TMDL will require boaters to register for a \$1,094 Waste Discharge Permit	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. The TMDL does not require boaters to register for a \$1094 waste discharge permit. Please see the relevant portion of the Los Angeles Water Board’s response to comment 14.8 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board has a variety of implementation options available to ensure compliance with the TMDL. While issuing individual waste discharge requirements (WDRs) to boaters is one of these options, it is highly unlikely that the Regional Board would choose to implement the TMDL in this manner as it would be both costly to boaters and inefficient for the Regional Board. A more likely implementation mechanism is a conditional waiver, similar to that used by the Regional Board to regulate farmers through the Irrigated Lands Program, or another regulatory mechanism, such as a cleanup and abatement order, that has minimal costs to the discharger in terms of fees.</p> <p>Please also see the Los Angeles Water Board’s response to comment 02.10 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Selection of the most appropriate implementation mechanisms will be finalized over the first two years</p>

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			<p>of TMDL implementation. A hard date for development of an implementation mechanism has been added to the revised draft TMDL.</p> <p>None of the TMDL support documents state that boaters will be required to register for a \$1094 permit. As stated in the Los Angeles Water Board's response to comments, it is highly unlikely that the Board would choose to implement the TMDL with individual WDRs because it is inefficient and expensive. The incorrect information that the Los Angeles Water Board planned to require individual boat owners to obtain WDRs, at a cost of over \$1,000, was first disseminated by the County of Los Angeles in a flyer e-mailed to yacht club commodores and dockmasters and posted to the Department of Beaches and Harbors website prior to the February hearing. The Los Angeles Water Board has attempted to disseminate correct information and post it to their website, but the misconceptions persist.</p>
4.6	General Stakeholders	<p>It is not fair to make current boat owners liable for levels of copper in the marina that accumulated over many years.</p> <p>This comes as a shock to responsible boaters who have maintained their boats and used perfectly legal hull paints.</p>	<p>The assertion that boaters are being held liable for legacy pollution is incorrect. The TMDL requires boaters to reduce their current discharge of copper. The TMDL does not require boaters to address copper that has already made its way into Marina del Rey Harbor.</p> <p>The naming of boat owners as necessary participants in the implementation plan for the TMDL is not an assignment of legal liability for current pollution levels or a declaration of wrongdoing. The TMDL identifies the sources contributing to dissolved copper in the harbor and describes possible mechanisms to reduce the amount of copper discharged from identified sources. In this case, the boat hulls in Marina del</p>

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			<p>Rey Harbor are a significant source of copper in the water column even though the paints used on the boats may otherwise be compliant with state and federal law.</p>
4.7	General Stakeholders	<p>The frequency of boat paint stripping cited in the Board’s economic analysis is wrong</p> <p>Boats in MDR do not have their bottoms stripped every 7-10 years as a part of normal boat maintenance. Their bottoms are repainted about every 3-4 years not every 1-3 years. Many boaters state that they are not planning to strip their boats for another [20+] years.</p> <p>The boatyards in Marina del Rey state that most vessels should be stripped about every 25 years as old paint applications begin to flake off after about 7-8 coats, however, many are never stripped as it is expensive and beyond the affordability for many small vessel owners. In addition, if boat bottoms are aggressively cleaned by divers, the ablative nature of most bottom paints render stripping unnecessary as most of the paint is removed in the water. If a bottom is not stripped when recommended by the yard, there is typically no warranty provided for the new paint application and excessive flaking may occur. Other reasons for stripping include blister repair or in order to switch to a different type of paint which will not properly adhere to the existing copper bottom paint.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see also the relevant portion of the Los Angeles Water Board’s response to comment 52.1 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Estimates of hull painting frequency are based on conversations with boaters and reported values. Some boats in Marina del Rey Harbor may have paint stripped less frequently than this estimate.</p> <p>There is much discrepancy regarding the frequency of stripping hull paint from boat hulls. The Los Angeles Water Board relied on personal communication in combination with published reports in determining the rate of stripping. The State Water Board concurs that this is an acceptable means of substantiating such information in the TMDL. Regardless of the correct estimate of stripping frequencies, the Los Angeles Water Board has committed to pursue grant funding to the cover the costs of stripping and/or paint conversions. The frequency of current stripping will not hinder the ability to implement the TMDL or reduce the necessity to meet water quality standards in a timely fashion.</p>
4.8	General Stakeholders	<p>It will not be economically insignificant to convert from copper paints to biocide-free paints on existing boat bottoms. The estimated additional cost for an average 40-foot boat will be about \$70,564 over ten years. This estimate includes the initial cost to convert a boat from</p>	<p>This comment incorrectly implies that the Los Angeles Water Board found that the costs of implementing the TMDL are insignificant. The Los Angeles Water Board analyzed the costs of the reasonably foreseeable methods of compliance with the TMDL, including paint conversions, in order to</p>

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		<p>copper-based paint to Intersleek 900, a silicate paint, which is estimated to be \$13,366. The initial cost estimates include a stripping cost of \$4000. Stripping costs are higher than in other regions because sand or soda blasting is not permitted under current AQMD regulations, and chemical removal of existing copper paints is used at this time. Once converted to a non-toxic bottom paint, the boat will require weekly cleanings in the summer and bi-weekly cleanings in the winter for a total of 39 cleanings per year. Since there are no divers yet trained in this procedure at Marina del Rey, we estimate the cost to be about \$15 per cleaning higher than for copper paints. Since biocide free silicate bottom paints will only last about 18-24 months, repainting will be required 2 to 3 times more frequently at greater costs.</p>	<p>comply with CEQA. Economic analyses were included in the Substitute Environmental Documents, including the staff report supporting the TMDL. The Los Angeles Water Board did not find that the costs were insignificant.</p> <p>The costs in this comment are estimated for one brand of non-toxic silicate coating only, which is the most expensive alternative coating option. There are other non-toxic coatings that are not silicates, such as epoxy coatings. Costs of several types of antifouling coatings were presented in the TMDL staff report based a summary of manufacturer-reported costs. In addition, the Los Angeles Water Board estimated the difference in cost between a boat painted with a copper-based paint and a non-toxic epoxy coating and the analysis indicated that the use of a non-toxic epoxy coating could potentially reduce the cost of maintaining a vessel docked in the harbor over the long term because some epoxy paints have been reported to last longer than copper-based paints.</p> <p>In addition, several of the assumptions used in the estimates of silicate coating costs are incorrect.</p> <ul style="list-style-type: none"> <li>The line items in the total initial cost are not substantiated. This comment states that the estimates are based on experience; however, the boatyards have reported widely different cost estimates over the course of TMDL development. For example, according to the County of Los Angeles' comment letter to the Los Angeles Water Board, the boat yards have reported that the cost of stripping paint from the hull of a standard 35 foot boat is between \$6,000 and \$7,000. Yet, this white paper claims it will cost \$4,000 to strip a 35-foot boat. Another example of the disparity in costs reported is Mr. Schem's testimony</li> </ul>

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			<p>at the February hearing, at which he states, “The expense involved with the utilization of these paints for a typical 40-foot boat will be approximately \$7,650 more than copper-bottom paint initially, and another \$4,500 for each time the boat is hauled. This is based on actual experience. We're in the business.” Because of the range of costs reported by the boatyards, the Los Angeles Water Board relied on upon impartial published reports by educational institutions and agencies in combination with information provided by the boatyards in order to present a reasonable range of costs. The Los Angeles Water Board assumed stripping costs of \$6,000 in their cost estimate.</p> <ul style="list-style-type: none"><li>• At the October 15, 2013 meeting with Los Angeles Water Board staff, the owners of the two boatyards stated that in order to comply with AQMD regulations, they needed to perform sanding in enclosed areas. This contradicts the statement in this comment that chemical removal of existing copper paints is used at this time. In addition, abrasive blasting is not prohibited by AQMD (AQMD Rule 1140).</li><li>• The increased cleaning frequency is exaggerated and contradicts published studies and surveys of increased hull cleaning requirements.</li><li>• The lifespan of silicate coatings may be underestimated. And again, there are other alternative coatings with longer lifespans. Reports vary on the longevity of non-toxic coatings, with some reporting one year and some reporting 10 years.</li></ul>

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4.9	General Stakeholders	<p>There are no viable, biocide-free bottom paints commercially available for Marina del Rey vessels.</p> <p>The Board states that there are actually cheaper non-copper based paints available on the market. We are unable to find one example of this. The non-copper or low-copper paints available are extremely costly, and difficult to apply.</p> <p>Although there have been many new non-copper bottom paints introduced to the market containing alternative biocides as their active ingredients, none of the existing commercially available biocide-free (non-toxic) bottom paint products serve as an acceptable alternative.</p> <p>The simple fact is that without a biocide, bottom paints do not deter the recruitment of marine fouling organisms to the bottoms of boats. Instead, biocide-free paints rely on mechanical means for keeping the boat bottom clean. These mechanical means include manual cleaning as well as by the force of water moving past the hull while underway. In order to maintain a clean and functional bottom, boats would need to be cleaned weekly during the summer months and every two weeks during the winter, greatly increasing related expenses.</p> <p>Biocide-free paints such as hard epoxy bottoms are not conducive to permanently moored vessels in MDR. These paints are only viable for racing vessels and go-fast boats which are removed from the marine environment after use. Soft bottom paints such as silicates require the stripping of the existing copper paint prior to application, are prone to physical damage, last only about a third to</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see also the relevant portion of the Los Angeles Water Board's response to comment 05.6 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">Alternative antifouling paint options are available and have been tested in Shelter Island Yacht Basin (SIYB). It is anticipated that additional paint options will become available during the implementation of this TMDL. The Port of San Diego has shared results of studies and made paint recommendations available to the public on their website: <a href="http://www.portofsandiego.org/environment/copper-reductionprogram.html">http://www.portofsandiego.org/environment/copper-reductionprogram.html</a>. Additional information to aid in selecting an alternative hull paint and on integrated pest management can be found through the University of California website: <a href="http://ucanr.org/sites/coast/">http://ucanr.org/sites/coast/</a>.</p> <p>The statement that no alternative hull paints are available is false. Both soft and hard non-biocide paints are available on the market and were shown to be viable alternatives to copper-based paint both in their effectiveness and long-term cost in a study conducted by the Unified Port of San Diego. This statement also contradicts statements made by the boatyards at an October 15, 2013 meeting with Los Angeles Water Board staff. At that meeting, both boatyards stated that they carried biocide free paints on their shelves and that they were available at other retailers as well. The boatyards stated that they had done five conversions to biocide free coatings that year and Windward Yacht Center stated that they had done</p>

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		<p>half as long as copper paints, require specialized and more frequent cleaning, are difficult to apply, and are about three times more expensive per gallon. As the representative for Interlux Paint Company testified at the RWQCB hearing this February, these paints, such as Intersleek 900, are designed for ocean going container ships that continuously ply the oceans at high speeds which provide the desired self-cleaning effect.</p> <p>The MDR boat yards have little or no experience in applying silicate paints and estimate that due to increased drying time, moisture considerations, and AQMD regulations they will require significant investment in paint booth infrastructure, training, and permitting. In addition, the manufacturers of major silicate paints require owners to sign an end-use waiver and boat yards will not offer a standard warranty as their effectiveness is not likely to provide a high level of customer satisfaction. For these reasons and without any substantial real world experience with these paints on small boats, few boat yard customers will voluntarily convert to non-biocide paints.</p>	<p>one. At that meeting, the boatyards discussed the constraints to using non-toxic paints, such as more frequent hull cleaning, and hazardous waste disposal, and Los Angeles Water Board discussed those constraints in the documents supporting the TMDL. For example, according to the TMDL staff report, “Nontoxic hull coatings can be less effective at preventing the attachment of fouling organisms, so they should be used with a companion strategy to increase their efficacy. Such companion strategies may include in-water hull cleaning (to remove built-up organisms), storage in a slip liner, or storage out of water in order to control fouling organisms.”</p> <p>The TMDL acknowledges that increased hull cleaning frequency may be prudent when using non-toxic coatings, particularly with boats that do not regularly leave the dock.</p> <p>The State Water Board acknowledges that there are alternative hull paints, which have been tested and are ready for use, but which may be new to the boatyards operating in Marina del Rey. Boaters and boatyards will need to collaborate in determining the most suitable paint for each individual boat, considering a variety of factors such as how the boat is used as well as the copper impairment in the Marina.</p> <p>The State Water Board concurs with the Los Angeles Water Board’s finding that non-copper based hull paints can be more cost effective than copper-based hull paints. This statement is supported by research conducted by California Sea Grant<sup>6</sup>.</p>

<sup>6</sup> Johnson, L. T. and J. A. Miller. November 2003. Making Dollars and Sense of Nontoxic Antifouling Strategies for Boats. California Sea Grant Report T-052

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4.10	General Stakeholders	<p>The TMDL is inconsistent with efforts of the Department of Pesticide Regulation (DPR). The introduction of this revised TMDL is inappropriate at this time.</p> <p>Assembly Bill No. 425 was just signed into law on October 15, 2013 which directs the California Department of Pesticide Regulation (DPR) to develop mitigation measures regarding copper-based antifouling coatings to protect aquatic environments. They are required to take action by February 1, 2014. This TMDL ignores the intended purpose of the law and gets ahead of the scientific evaluation by DPR – the mitigation strategies should be given time to take effect. We believe The Los Angeles Regional Water Quality Control Board (LARWQCB) is acting without the complete scientific picture.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment.</p> <p>Please see the relevant portion of the Los Angeles Water Board’s response to comment 04.5 to Regional Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">Copper pollution in marinas from antifouling paints is acknowledged as a statewide and nationwide concern. When the original TMDL was adopted in 2005, it was anticipated that efforts to address pollution from antifouling paints would be addressed on a broader scale. These efforts have not come to fruition; therefore, the water column impairment in Marina del Rey Harbor must be addressed on a site-specific basis. Broader efforts, including actions resulting from AB 425, which directs DPR to estimate an acceptable copper leaching rate from copper-based paints, will serve to enhance the implementation efforts of this TMDL.</p> <p>The Department of Pesticide Regulation’s (DPR) leach rate recommendations outlined in the memorandum dated January 30, 2014 are not designed to meet the dissolved copper standard of 3.1 µg/L required by the California Toxic Rule (CTR) in all California marinas. Marina del Rey Harbor falls into the highest risk category discussed in DPR’s memorandum (scenario 5). DPR’s recommended leach rate is anticipated to meet CTR in those marinas that fall into scenarios 1 and 2. DPR projects the possibility of meeting CTR in marinas categorized in scenario 3 with copper discharge reductions achieved through additional mitigation</p>



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			<p>recommendations, including hull cleaning BMPs.</p> <p>The dissolved copper numeric target in the TMDL is equivalent to the CTR criterion. For the reasons discussed above, efforts beyond the paint reformulation effort being led by DPR are required to meet the Marina del Rey Harbor Toxic Pollutants TMDL. The commenter states that “the TMDL amendment would improperly prohibit the use of antifouling paints currently approved by the State while requiring the use reformulated paints, which do not yet exist in many instances.” <u>The TMDL does not prohibit the use of antifouling paints.</u> Instead, the TMDL assigns a copper load reduction of 85% and discusses potential means of compliance, including conversions to non-toxic paint or very low copper paint, integrated pest management, and hull cleaning BMPs. Lower leaching copper paints and non-biocide paints are currently available. The reformulation of paints, resulting in the removal from the market of those paints with the highest copper leaching rates, and other mitigation measures required by AB 425, will likely aid in efforts to achieve the TMDL. But the measures are not expected to be sufficient in Marina del Rey Harbor. The TMDL is not at odds with DPR’s recommendations; rather, the TMDL will work in conjunction with those recommendations to reach water quality objectives in the harbor.</p>
4.11	General Stakeholders	<p>The proposed TMDL will force lower income recreational boaters to leave Marina del Rey Harbor</p> <p>The economy has already forced many boat owners to pull their boats out of the water because they can't afford to be in one of the most expensive marinas in California. The proposed TMDL requirements are to register for a \$1,094</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the relevant portion of the Los Angeles Water Board’s response to comment 05.11 to Los Angeles Water Board resolution R14-004, which states:</p>

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		<p>Waste Discharge Permit, pay \$8,000 or more to strip and paint my boat, incur more than double the amount of cleaning costs, incur compliance costs, be named a “Responsible Party” for pollutants, risk litigation, and put my property into legal jeopardy. Under these circumstances, I would leave the Marina rather than be subject to these onerous burdens and legal jeopardy.</p>	<p>The Regional Board is sensitive to the concerns of small boaters and/or lower income boaters in Marina del Rey Harbor. It is anticipated that grant funding, similar to that obtained to cover stripping costs for boaters in Shelter Island Yacht Basin, will be obtained to reduce the financial burden on Marina del Rey boaters as they convert to more environmentally friendly hull paints. The Regional Board supports efforts to design these grants such that a larger percentage of costs are covered for smaller boats, where the cost [of] conversion may represent a larger percentage of the overall cost of owning and operating a boat in Marina del Rey Harbor.</p> <p>The TMDL does not require boaters to register for a \$1094 waste discharge permit. Please see response to Comment 4.5. Please also see the relevant portion of the Los Angeles Water Board’s response to comment 4.8 to Los Angeles Water Board resolution R14-004, which states:</p> <p>The Regional Board has a variety of implementation options available to ensure compliance with the TMDL. While issuing individual waste discharge requirements (WDRs) to boaters is one of these options, it is highly unlikely that the Regional Board would choose to implement the TMDL in this manner as it would be both costly to boaters and inefficient for the Regional Board. A more likely implementation mechanism is a conditional waiver, similar to that used by the Regional Board to regulate farmers through the Irrigated Lands</p>

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			<p>Program, or another regulatory mechanism, such as a cleanup and abatement order, that has minimal costs to the discharger in terms of fees.</p> <p>The TMDL does not subject individual boaters to additional legal liability. The TMDL identifies the boat hulls as sources of copper that leach into the harbor, and identifies the owners of the boats as parties with the ability to control this source of pollutants. Boat owners may be subject to future regulation in order to meet the WLAs in the TMDL, but any such regulation would require a separate public process. None of the possible regulatory mechanism would subject the boat owners to third party law suits under the Clean Water Act or the Porter-Cologne Water Quality Control Act.</p>
4.12	General Stakeholders	<p>The proposed TMDL does not consider the impact on anchorages and local businesses as some boaters leave the marina.</p> <p>Even if only 10% of boaters leave, that amounts to many millions of dollars in lost revenues.</p> <p>Boat values will be depressed. Slip vacancies will increase dramatically. The boaters who stay will have less money to spend. There will be a downturn for local businesses. The end result is that recreational boating, which is promoted by the California Coastal Act under the jurisdiction of the California Coastal Commission, will be discouraged and seriously endangered in Marina del Rey.</p> <p>By holding anchorages liable for environmental cleanup costs, the TMDL will depress the value of leaseholds, hinder lease renewals with the Los Angeles County</p>	<p>The State Water Board finds that there are viable options for meeting the TMDL that will not impose substantial additional costs on boaters that would cause an exodus of boaters from Marina del Rey Harbor. If such an undesirable outcome occurs, it would most likely be the result of misinformation rather than the actual costs of implementing the TMDL.</p> <p>Boaters leaving the Marina to avoid regulation is not considered as a potential implementation measure for achieving the TMDL and thus the economic impacts of such an implementation option were not considered by the Los Angeles Water Board. The State Water Board concurs with this approach.</p> <p>The anchorages are identified by the TMDL as a source of copper in the water column. The TMDL discusses possible regulatory mechanisms to reduce copper leaching, but does not itself impose any such regulation. Only a future regulatory</p>

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		<p>landlord, and potentially make it impossible to get financing. Most anchorages do not have pollution liability insurance.</p>	<p>action subject to a separate public process could impose liability on the anchorages. In no case would such a regulatory mechanism to reduce copper leaching from boat hulls subject the anchorages to third party liability under the Clean Water Act or the Porter-Cologne Water Quality Control Act.</p> <p>The TMDL does not identify anchorages or boat owners as responsible parties for any clean-up costs.</p>
4.13	General Stakeholders	<p>The 10-year compliance deadline will be impossible to meet.</p> <p>It will not be feasible for the two major boat yards in MDR to strip and apply a biocide free paint to every boat within 10 years.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment that the ten-year implementation schedule is reasonable. Please see the relevant portion of the Los Angeles Water Board's response to comment 04.3 to Los Angeles Water Board Resolution R14-004, which states</p> <p>The timeline also accounts for the capacity of the boat yards in Marina del Rey Harbor to apply hull paints to all boats residing in Marina del Rey Harbor. Additionally, delay in implementing the proposed TMDL will result in continued detriment to the aquatic community residing in the harbor. The Los Angeles Regional Board also intends to help secure grant funding for paint conversions. Furthermore, enforceable regulatory mechanisms are available to ensure implementation of the TMDL. It is anticipated that the available funding combined</p>

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			<p>with the regulatory tool will provide the incentive for boaters to switch bottom paints. Thus, the Regional Board finds the proposed timeline to be reasonable and achievable.</p> <p>This comment also contradicts information relayed to Los Angeles Water Board staff by boatyard owners during the development of the TMDL about boatyard capacity (see State Water Board response to comment 1.8). Regardless, the TMDL implementation schedule is conservatively long as it considered the time to repaint the boat hulls of every boat in the marina, were the marina at full capacity. It is foreseeable that a smaller number of boats would be stripped of hull paint than the number considered in the TMDL. Marina del Rey Harbor is not currently at capacity, and this reduces the number of boat hulls that currently need to be addressed through implementation measures from that projected in the TMDL. Additionally, implementation measures could result in boats new to Marina del Rey Harbor arriving in a condition that would meet the TMDL. Additional implementation measures including hull cleaning BMPs and very low copper paints may also reduce the number of boat hulls that require stripping.</p> <p>In other words, the proposed TMDL does not require the boat yards in Marina del Rey to strip and apply alternative paint to <i>every boat</i> within 10 years.</p>
4.14	General Stakeholders	<p>The proposed TMDL is not based on site specific toxicity.</p> <p>Boaters in Southern California are being held responsible for presumed copper toxicity in marinas when scientific studies have concluded that copper is not toxic in sea</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the Los Angeles Water Board's response to comment 04.4 to Los Angeles Water Board resolution R14-</p>

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		<p>water. Very expensive scientific studies performed in south San Francisco Bay several years ago concluded that copper was not toxic in sea water.</p> <p>The United States Environmental Protection Agency has initiated the development of the Biotic Ligand Model (BLM) for marine waters, and we encourage the State and Regional Water Boards to incorporate the BLM into TMDL and Basin Plan Amendments. Regulators should rely on the most up to- date scientific approaches and information to develop consistent and appropriate water quality standards that are protective while also recognizing the site-specific conditions within impaired areas.</p>	<p>004, which states</p> <p>The California Toxics Rule provides the applicable water quality criteria for copper in saltwater. The chronic copper salt water criterion of 3.1 µg/L is a national criterion and is based on species and sites that are reflective of sites throughout the nation, including Marina del Rey Harbor. A site-specific study has not been conducted in Marina del Rey Harbor that would enable evaluation of the appropriateness of a site-specific objective. Thus, it is not appropriate at this time to set a site-specific objective for copper in the water column of Marina del Rey Harbor.</p> <p>A Biotic Ligand Model (BLM) for copper in saltwater has not been approved by U.S. EPA for use as a water quality criteria. A date when a BLM for copper in saltwater may be approved by U.S. EPA is uncertain. The California Toxics Rule promulgated 3.1 µg/L as the Criterion Continuous Concentration (CCC) and 4.8 µg/L as the Criterion Maximum Concentration (CMC) for copper in saltwater. These criteria are the appropriate water quality objectives to protect aquatic life in Marina del Rey Harbor. Should U.S. EPA adopt a saltwater BLM as the recommended water quality criteria and a site-specific study in Marina del Rey Harbor indicates that alternative water quality objectives, which may be higher or lower than the current objectives, are appropriate, the TMDL can be reconsidered at any time to incorporate such findings.</p> <p>Results of preliminary site-specific modeling of</p>

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			<p>Marina del Rey Harbor presented in a 2009 Department of Pesticide Regulation (DPR) report suggest a potential FCC (equivalent to CCC) ranging between 2.9 and 5.3 µg/L and a potential FAC (equivalent to CMC) of 1.5 – 8.2 µg/L. While this modeling has not been vetted by the Regional Board, the criteria promulgated in the California Toxics Rule (CCC: 3.1 µg/L, CMC: 4.8 µg/L) fall within the range suggested by the DPR study. California Toxics Rule criteria are designed to be protective and thus it is consistent that the 3.1 µg/L proposed as the TMDL numeric target and the corresponding CTR criterion falls toward the lower range of the FCC presented in the 2009 DPR report. The TMDL may be revised at any time to incorporate the results of new scientific study, including a site-specific objective if appropriate.</p> <p>This comment contains inaccurate information. Scientific studies have not concluded that copper is not toxic in sea water. No reference is provided to support this statement by the commenter. The study referenced was site-specific to San Francisco Bay. The study did not find that “copper was not toxic in sea water,” but rather it found that the level of copper that was toxic was higher in San Francisco Bay than the CTR criterion. There scientific evidence to support the application of the results of this study directly as a water quality objective for Marina del Rey Harbor.</p>
4.15	General Stakeholders	<p>There is no apparent water quality problem in Marina del Rey.</p> <p>The major water quality problem in MDR is too much sea life. Particularly seals, sea lions and thousands of sea birds</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the relevant portions of the Los Angeles Water Board’s response to comment 24.3 to Los Angeles Water</p>

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		<p>all of which contaminate the rocks, docks, water and boats. It is obvious to anyone who cares to look that the food chain is very, very healthy.</p>	<p>Board resolution R14-004, which states:</p> <p>The levels of copper in Marina del Rey Harbor exceed water quality criteria and are toxic to aquatic life. Many organisms, including the larvae of fish and invertebrates are harmed by high levels of copper. This negatively affects ocean ecosystems. Life stages particularly sensitive to high copper concentrations include invertebrates such as the mussel, <i>Mytilus galloprovincialis</i>, a species resident to Marina del Rey Harbor.</p> <p>Please see also the relevant portions of the Los Angeles Water Board's response to comment 14.3 to Los Angeles Water Board resolution R14-004, which states:</p> <p>In developing the CTR, EPA judged the criteria to be appropriate for all waters of the United States, and to all ecosystems, including those waters and ecosystems in California. In fact, several of the species used in calculating the CTR copper criteria are resident in California and in Marina del Rey.</p> <p>Please see also the relevant portions of the Los Angeles Water Board's response to comment 08.4 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>In addition, Toxicity Identification Evaluations (TIEs) were performed on water samples from the front and back basins of Marina del Rey Harbor. The results are presented in a 2009 publication by the Department of Pesticide Regulation (Singhasemanon 2009). In the publication, the study's authors conclude that copper</p>

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			<p>is the likely cause of observed toxicity in the mussel, <i>Mytilus galloprovincialis</i>, a resident organism of Marina del Rey Harbor.</p>
4.16	General Stakeholders	<p>According to John Adriany, from ChemMetrics</p> <p>The TMDL as currently written is based on unrealistic and oversimplified mechanisms of tidal effects on the levels of copper in the basin, and include:</p> <ul style="list-style-type: none"> <li>• Failure to consider losses of in dissolved copper in tidal exchanges, a substantial loss mechanism. In a comparable California harbor, 65% of the copper leaching from boat paints flushes out daily.</li> <li>• The hydrological model is wrong and the box model used in calculating the TMDL was subsequently used incorrectly. It applies only when salinity inside is higher than the ocean waters outside the harbor. The fact is that fresh water is a source of recharge in Marina Del Rey.</li> </ul>	<p>General comments regarding the modeling employed in developing the TMDL were raised before the Los Angeles Water Board. These specific questions were not raised before the Los Angeles Water Board. Nevertheless, the comment is addressed below.</p> <p>Tidal exchange is considered in the model through incorporation of a dispersion coefficient.</p> <p>The State Water Board is uncertain why the commenter finds the hydrologic model to be wrong. Salinity is employed in the model to account for advection due to the salinity gradient between the harbor and the ocean. Use of salinity measurements in this fashion is not dependent on where salinity is greater within the geographical area that is modeled.</p>
4.17	General Stakeholders	<p>The Board offers no scientific studies indicating that the boaters are the cause of copper levels in the marina.</p> <p>There are many contributors to copper in the environment, including automotive brake pads, and runoff from the Ballona Creek.</p> <p>The Los Angeles studies indicate that the load in Marina del Rey is 85% higher than the EPA level, therefore has</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the relevant portions of the Los Angeles Water Board's response to comment 13.2 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>The existing TMDL addresses all upstream sources of copper. Based on an evaluation of additional data</p>

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		<p>arbitrarily proposed to set the level of bottoms at 85% without any further study of effectiveness or consideration of the effect of changes due to copper brake pads. There is no imperial evidence that other sources of copper will not maintain the present load level.</p>	<p>as part of the TMDL source analysis and linkage analysis, the proposed TMDL revision adds passive leaching from copper-based antifouling paints as a source of copper to the water column and assigns load allocations for this source.</p> <p>Please see also the relevant portion of the Los Angeles Water Board's response to comment 29.5 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The effects of copper brake pad legislation, SB 346, are being monitored. Effectiveness of this legislation will not alter the necessity of addressing copper from antifouling hull paints.</p> <p>The 85% reduction of copper required by the TMDL was determined through site-specific modeling of the reduction in discharge from antifouling paints necessary to attain the water quality objective set forth in the California Toxics Rule and employed as a numeric target in this TMDL. Consequently, the requirement for an 85% reduction in discharge is not arbitrary.</p>
4.18	General Stakeholders	<p>According to Joseph D. Haythorn:</p> <p>The notion that the marina may be economically dredged without disruption of boating safety and enjoyment is preposterous. It seems likely that the mud in the marina was polluted from the oil drilling operations which existed for years rather from current use. The pollutants are</p>	<p>This comment was not raised before the Los Angeles Water Board. Nevertheless, it is addressed below.</p> <p>The State Water Board finds the idea that dredging cannot be conducted safely to be false. Dredging will likely result in temporary impacts to boaters and these impacts are analyzed in the SED. See comment 1.15 regarding the environmental</p>

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		sealed in the mud and dredging will disrupt and cause them to be redistributed when lifted, not removed.	effects of dredging.
4.19	General Stakeholders	<p>From American Coatings Association:</p> <p>The current TMDL and the TMDL reconsideration do not consider the actual beneficial uses of Marina del Rey. For example, Marina del Rey clearly will not be used and was not designed for shell fishing. Its edges consists primarily of concrete walls not a natural shoreline. Considering California’s Porter Cologne Act “past, present and <b>probable</b> future beneficiary [sic] uses of” the water (PORTER COLOGNE ACT, ARTICLE 3. REGIONAL WATER QUALITY CONTROL PLANS, Section 13241 (a)) – it is clear that many beneficial uses regulated in TMDL have never existed in Marina del Rey in the first place. Marina del Rey is a man-made water body designed for one purpose – to moor vessels. The TMDL should reflect the actual past, present and <b>probable</b> future beneficiary [sic] uses of this water.</p>	<p>This comment was previously made to the Los Angeles Water Board. The commenter has repeated their comment to the Los Angeles Water Board without noting any deficiency in the response from the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the relevant portions of the Los Angeles Water Board’s response to comment 13.6 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">In accordance with the federal Clean Water Act and the State Porter-Cologne Water Quality Control Act, Marina del Rey Harbor is designated as supporting the existing beneficial uses of commercial and sport fishing, shellfish harvesting, marine habitat, wildlife habitat, rare, threatened and endangered species habitat, and water contact recreation. The Clean Water Act explicitly states that, wherever attainable, water quality for the protection and propagation of fish, shellfish, and wildlife, and recreation shall be achieved.</p> <p style="padding-left: 40px;">Designation of these beneficial uses can only be removed by conducting a site specific use attainability analysis that makes a determination that the use has not existed since November 28, 1975, does not currently exist and does not have the potential to exist.</p> <p style="padding-left: 40px;">Fishing is a frequently observed beneficial use in Marina del Rey Harbor:</p>

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			<p><a href="http://www.visitmarinadelrey.com/harbor-guide/harbor-rules">http://www.visitmarinadelrey.com/harbor-guide/harbor-rules</a></p> <p><a href="http://beaches.lacounty.gov/wps/portal/dbh!/ut/p/b0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOJdDQwM3P3dgo0s_IxNDTyNwtwsjD1NgWlmlH6BXkmigCZKxxI/?1dmy&amp;page=dept.lac.dbh.home.mdr.detail.hidden&amp;urile=wcm%3apath%3a/dbh+content/dbh+site/home/marina+del+rey/parks/burton+w.+chace+p ark+-+mdr">http://beaches.lacounty.gov/wps/portal/dbh!/ut/p/b0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOJdDQwM3P3dgo0s_IxNDTyNwtwsjD1NgWlmlH6BXkmigCZKxxI/?1dmy&amp;page=dept.lac.dbh.home.mdr.detail.hidden&amp;urile=wcm%3apath%3a/dbh+content/dbh+site/home/marina+del+rey/parks/burton+w.+chace+p ark+-+mdr</a></p> <p>There are no fishing restrictions in Marina del Rey Harbor according to Title 19 of the Los Angeles County Code. Diving (i.e., shellfish harvesting) outside of beach areas is restricted and divers must obtain a written permit from the Harbor Master, but it is not prohibited. Regardless of any local restrictions, the existing uses of Marina del Rey Harbor must be protected under the Clean Water Act.</p> <p>The numeric targets for dissolved copper implemented in the proposed TMDL are based on the most protective applicable water quality objective. As such, numeric targets for dissolved copper in Marina del Rey Harbor are designed to protect aquatic life. Dedesignation of fishing and shellfish harvesting uses would not, therefore, affect these numeric targets.</p> <p>TMDLs and their components are not water quality objectives, and thus their establishment does not implicate California Water Code section 13241.</p>

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			<p>Rather, TMDLs are based on the water quality objectives in the Basin Plan, which, in turn, are based on the beneficial uses of the waterbody.</p> <p>A TMDL is designed to attain water quality standards in the impaired water body. Those water quality standards include the beneficial uses of the waterbody as established in the existing Basin Plan. These beneficial uses may be revised only as allowed by state and federal law, and only through an amendment of the Basin Plan. Reconsideration of the beneficial uses listed in the Basin Plan is not part of the TMDL process. Furthermore, removal of the shell fishing use would not impact the water quality objective for copper in Marina del Rey Harbor, because the objective is based on the protection of aquatic life and is necessary to achieve the other beneficial uses of marine habitat and wildlife habitat.</p> <p>Neither TMDLs nor their targets or other components are water quality objectives, and thus their establishment or revision does not implicate California Water Code section 13241.</p>
4.20	General Stakeholders	<p>The TMDL did not consider increased invasive species and other environmental impacts</p> <p>The Regional Board failed to do a meaningful site specific environmental analysis of the increase in invasive species that will result from eliminating copper bio-cide paints. The Board stated that “adverse environmental effects are acceptable” including the “increased growth of fouling organisms and invasive species” as a result of using non-copper based paints.</p>	<p>The State Board disagrees with this comment. The Los Angeles Water Board did consider the potential for increased invasive species and included discussion on the proper use of alternative anti-fouling strategies in the SED and Staff Report supporting the TMDL. The required reduction in copper discharge from boat hulls should be accompanied by the use of alternative means of deterring hull fouling and the State Board does not find the TMDL to contradict the application of appropriate and necessary measures to prevent the transport of invasive species. Please see the Los Angeles Water Board’s response to comment 5.8 to Los Angeles Water Board</p>

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		<p>Copper biocides have worked well over the decades to reduce the transport of invasive species. Eliminating this protection could have disastrous consequences. Non copper paints will foster the growth of biofilms on hulls, which harbor harmful bacteria and carbon, and which cause increased drag, resulting in the burning of more fuel and discharge of more emissions into the marina.</p> <p>This, plus the dredging the Regional Board wants could seriously threaten the delicate ecosystem of our marina, create new, unknown risks and outweigh the potential benefit from banning copper paint.</p>	<p>resolution R14-004, which states:</p> <p>The SED acknowledges that increased growth of fouling organisms and invasive species could result from the switch from copper based anti-fouling paint. The SED identifies mitigation measures to address that potential impact. The SED properly identifies hull cleaning practices as one potential mitigation measure for potential impacts related to invasive species. (See Chapter 6.2.2, pp. 61-76).</p> <p>In addition, the SED includes a statement of overriding considerations which states that in view of the entire record supporting the TMDL, the specific economic, legal, social, technological, and other benefits of the proposed TMDL outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances.</p> <p>Also see the Los Angeles Water Board’s response to comment 6.2 to Los Angeles Water Board resolution R14-004, which states:</p> <p>Much research has been done and is ongoing regarding invasive species transport and the effects of antifouling paints on such transport. The Regional Board supports an integrated pest management approach as a means to reducing the risk of invasive species transport. Recent research indicates that some invasive species are copper-tolerant and thus copper paints may not be effective in reducing the transport of these organisms. In addition, a healthier</p>

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			<p>biological community in Marina del Rey Harbor may improve resistance to invasive species invasions.</p> <p>See comment 1.15 regarding the environmental effects of dredging.</p>
4.21	General Stakeholders	<p>According to Robert H. Somers:</p> <p>As import, the species claimed to be harmed by the copper waste is not even an "endangered species" in the first place. When I did research on this subject it became clear that the oceans have more than adequate invertebrates. In fact, this issue would not be of any concern but for the several marinas that were specifically designated by the water quality board under the Clean Water Act to be of concern. With that in mind, one must realize that the Ballona Creek itself has toxic substances carried from long distances into the Marina del Rey harbor area, yet there is no indication that those contributing to the toxic waste in the upper riparian areas are penalized in any way. Again, had it not been for the specific designation of the Marina del Rey harbor there would have been no concern for any harm to any species since none are considered to be endangered in any way.</p>	<p>This comment was not raised before the Los Angeles Water Board. Nevertheless, it is addressed below.</p> <p>This comment is unfounded. The water quality objectives applied as the basis of this TMDL were not selected for the protection of a particular endangered species, but rather are designed to be protective of all species that are sensitive to levels of copper in the aquatic environment.</p> <p>Additionally, it should be noted that TMDLs addressing copper have also been established for Ballona Creek.</p>
4.22	General Stakeholders	<p>What is to be done with the dredged sand? How does moving the problem from the Marina to somewhere else help?</p>	<p>The TMDL staff report and SED discuss disposal options for dredged material. Potential options for dredged material include disposal in a suitable landfill or use as fill material for projects such as the building of new piers. Isolating and containing the contaminated sediment will improve water quality in Marina del Rey Harbor and contain the contaminated sediment within a location where its impact on water quality as well as the larger environment is minimized.</p>

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			<p>The following language in Basin Plan Amendment ensures that a suitable location for the disposal of contaminated sediment will be found prior to beginning sediment remediation:</p> <p>“The TMDL may be reconsidered to revise the implementation schedule in order to ensure that pollutant sources are controlled and a suitable location for contaminated sediment disposal is available prior to remediation of contaminated sediments if the County has made a good faith effort to plan, fund, and permit sediment remediation activities.”</p>
4.23	General Stakeholders	<p>The TMDL should be reconsidered or delayed to consider a more practical approach.</p> <p>The Los Angeles Board appeared indifferent and unwilling to entertain a more pragmatic approach to achieving water quality that is desired by boaters, anchorages and the business community.</p> <p>This approach would include the application of the Biotic Ligand Model, once adopted, in order to recognize site-specific considerations and local water chemistry, the use of low copper and alternative biocide paints, training and licensing of bottom cleaners to implement best management practices, increasing the time to achieve compliance, and improved outreach to the boating community for education and for adoption of best management practices.</p>	<p>All implementation options outlined in this comment are consistent with and allowed for by the TMDL as adopted by the Los Angeles Water Board. The Los Angeles Water Board is committed to reconsidering the TMDL should the Biotic Ligand Model be approved by EPA and appropriate information in support of a site specific objective for copper is submitted to the Board. The potential advancements from other best management practices should enhance TMDL implementation and do not warrant delay in implementing the TMDL.</p>
4.24	General Stakeholders	<p>The whole idea of forcing an agenda that’s quite probably driven by a mere few idealistic souls to the likely detriment of thousands of people of all walks and socio</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment.</p>



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		<p>economic levels who use the marina, and the millions of dollars coming from who knows where but that could be well used to combat some of the real problems facing California and her citizens is not only blatantly absurd, it's just plain unfair.</p>	<p>Please see the Los Angeles Water Board's response to comment 05.6 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>The dissolved copper impairment must be addressed to comply with the Federal Clean Water Act and implementing regulations. Based on the source analysis and linkage analysis, the major source of dissolved copper in the harbor is copper from boat paint; therefore, this load allocation must be assigned to achieve the TMDL.</p> <p>The Regional Board finds that the proposed revision is timely and does not agree that the process has been rushed. The original TMDL, effective March 22, 2006, included discussion of a potential copper water column impairment in the Staff Report and required monitoring and study to clarify the existence and extent of such an impairment. The results of this work, carried out over 6 years, require listing Marina del Rey Harbor as impaired by copper in the water column and the required revision of the TMDL is the appropriate time to implement a TMDL for copper in the water column. Regional Board Staff began meeting with interested parties to discuss potential revisions to the TMDL based on the results of the studies in 2012. Once an approach had been finalized with the input of various scientists, public agency representatives, NGOs, and municipal and County staff, the Regional Board began outreach efforts to the boating community, beginning with a meeting with dockmasters and</p>

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			<p>lessees prior to releasing the TMDL for public comments, and following up with direct mailings to boat owners during the comment period.</p> <p>Alternative antifouling paint options are available and have been tested in Shelter Island Yacht Basin (SIYB). It is anticipated that additional paint options will become available during the implementation of this TMDL. The Port of San Diego has shared results of studies and made paint recommendations available to the public on their website: <a href="http://www.portofsandiego.org/environment/copper-reductionprogram.html">http://www.portofsandiego.org/environment/copper-reductionprogram.html</a>. Additional information to aid in selecting an alternative hull paint and on integrated pest management can be found through the University of California website: <a href="http://ucanr.org/sites/coast/">http://ucanr.org/sites/coast/</a>.</p>
4.25	General Stakeholders	<p>The beneficial uses protected by the TMDL are illegal.</p> <p>The representatives of the California Water Quality Control Board who discussed the proposed amendment with the Marina del Rey community explained that the ostensible reason for the amendment to the TMDL, was to facilitate swimming, fishing and mussel gathering in the Marina. These uses are presently illegal or are not what the Marina was designed to be. Further, in light of the Marina housing a fish hatchery, it is unclear how copper presents a risk. Nor is it clear how removal of copper would change swimming.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the relevant portions of the Los Angeles Water Board's response to comment 13.6 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>In accordance with the federal Clean Water Act and the State Porter-Cologne Water Quality Control Act, Marina del Rey Harbor is designated as supporting the existing beneficial uses of commercial and sport fishing, shellfish harvesting, marine habitat, wildlife habitat, rare, threatened and endangered species habitat, and water contact recreation. The Clean Water Act explicitly states that, wherever attainable, water quality for the protection and propagation of</p>

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			<p>fish, shellfish, and wildlife, and recreation shall be achieved.</p> <p>Designation of these beneficial uses can only be removed by conducting a site specific use attainability analysis that makes a determination that the use has not existed since November 28, 1975, does not currently exist and does not have the potential to exist.</p> <p>Fishing is a frequently observed beneficial use in Marina del Rey Harbor: <a href="http://www.visitmarinadelrey.com/harbor-guide/harbor-rules">http://www.visitmarinadelrey.com/harbor-guide/harbor-rules</a></p> <p><a href="http://beaches.lacounty.gov/wps/portal/dbh!/ut/p/b0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOJdDQwM3P3dgo0s_IxNDTyNwtwsjD1NgWLmlH6BXkmigCZKxxI/?1dmy&amp;page=dept.lac.dbh.home.mdr.detail.hidden&amp;urile=wcm%3apath%3a/dbh+content/dbh+site/home/marina+del+rey/parks/burton+w.+chace+park+--+mdr">http://beaches.lacounty.gov/wps/portal/dbh!/ut/p/b0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOJdDQwM3P3dgo0s_IxNDTyNwtwsjD1NgWLmlH6BXkmigCZKxxI/?1dmy&amp;page=dept.lac.dbh.home.mdr.detail.hidden&amp;urile=wcm%3apath%3a/dbh+content/dbh+site/home/marina+del+rey/parks/burton+w.+chace+park+--+mdr</a></p> <p>There are no fishing restrictions in Marina del Rey Harbor according to Title 19 of the Los Angeles County Code. Diving (i.e., shellfish harvesting) outside of beach areas is restricted and divers must obtain a written permit from the Harbor Master, but it is not prohibited. Regardless of any local restrictions, the existing uses of Marina del Rey Harbor must be protected under the Clean Water Act.</p>

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4.26	General Stakeholders	<p>According to John Hopewell of the American Coatings Association:</p> <p>Until a proper risk assessment is conducted the changes required in the TMDL should not be adopted and the TMDL reconsideration should be denied. The recommendation for 85% of the vessels mooring in the marina to switch exclusively to biocide free coatings will just create a different input into Marina del Rey. As an example, page 21 the Study “IPM for Boats: Integrated Pest Management for Hull Fouling in Southern California Coastal Marinas” Culver et al, June 2012 the fouling biomass accumulation on different coatings, including copper based coatings, is measured. On average, the biocide free hard epoxy and slick foul release coatings contributed significantly more organic matter into the environment when the hulls were cleaned than did the copper based coatings from the same activity. The sediment monitoring study conducted for Marina del Rey in 2008, “Final Report: MARINA DEL REY HARBOR SEDIMENT CHARACTERIZATION STUDY”, Weston Solutions, April 2008; clearly reports that the variable most closely related to sediment toxicity was the percent (%) clay in the sediment. There was not as direct a relationship to copper and zinc and these metals are very likely tied up in the clay and rendered nonbioavailable. The relationship of toxicity to clay % indicates that it is the stagnant water body conditions affecting the sediment quality. To add the additional burden of more organic matter into the sediment and water column could make this environment unhealthier. Until this input is quantified the actions proposed by this TMDL should not be implemented</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. The commenter does not state the reasoning for the inadequacy of the Los Angeles Water Board’s response. Please see the relevant portion of the Los Angeles Water Board’s response to comment 13.2 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board disagrees that biocide-free coatings are likely to be more toxic than copper. The cited findings from the Culver et al. study were related to the effectiveness of hull cleaning practices on different types of coatings and the conclusions drawn in this comment were not the conclusions of the study.</p> <p>Please see also the Los Angeles Water Board’s response to comment 13.3 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board disagrees with the conclusions drawn by the commentator on the sediment characterization study. Regardless, the proposed copper TMDL addressed exceedances of copper in the water column. The results of the sediment characterization study do not have significance for the establishment of load allocations for discharges of copper from boat hulls to the water column.</p>

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4.27	General Stakeholders	<p>According to John Hopewell of the American Coatings Association:</p> <p>The “Final Report: MARINA DEL REY HARBOR SEDIMENT CHARACTERIZATION STUDY” did not use a Toxicity Identification Evaluation (TIE) for measured sediment toxicity. Without it the TMDL may be addressing a toxicity issue regarding copper and zinc in the sediment that does not even exist. The report indicates the key factor most directly related to sediment toxicity is percent clay. Higher Percent clay relates to lower grain size and potentially to anoxic sediment conditions. The TMDL reconsideration is possibly making the sediment toxicity worse not better as discussed in item 2 above. A TIE should be conducted to determine if the proposed actions of this TMDL will lead to worse sediment conditions.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. The commenter does not state the reasoning for the inadequacy of the Los Angeles Water Board’s response. Please see the Los Angeles Water Board’s response to comment 13.5 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The purpose of the Sediment Characterization Study was to determine the areal extent of contamination in Marina del Rey Harbor sediments. A TIE was not necessary to attain this research goal and was therefore not included in the study.</p> <p style="padding-left: 40px;">TIEs were performed in Marina del Rey Harbor during a study led by the Department of Pesticide Regulation. The results are presented in a 2009 publication by the Department of Pesticide Regulation (Singhasemanon 2009). In the publication, the study’s authors conclude that copper is the likely cause of observed toxicity in the mussel, <i>Mytilus galloprovincialis</i>, a resident organism of Marina del Rey Harbor.</p>
4.28	General Stakeholders	<p>Why not ban the paint?</p>	<p>Neither the State Water Board nor the Los Angeles Water Board has the authority to ban the sale of copper-based hull paints. The Clean Water Act and the California Water Code authorize the Water Boards to regulate discharges into water bodies. It is the purview of the Department of Pesticide Regulation to regulate the sale of antifouling paints.</p>

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4.29	General Stakeholders	<p>From Peter Glick:</p> <p>I am informed that there is no base line to determine what is the inherent level of copper. So there is no apparent level to determine what is “natural” for Marina del Rey, other than speculation.</p>	<p>This comment was not raised before the Los Angeles Water Board. Nevertheless, it is addressed below.</p> <p>The appropriate criteria to protect water quality and beneficial uses in Marina del Rey Harbor is 3.1 µg/L, as required by the California Toxics Rule, 40 CFR §131.38. The criteria in the California Toxics Rule is the applicable criteria to maintain and protect beneficial uses related to aquatic life, unless a site specific objective is developed. A site specific objective could be developed that demonstrates that a higher level of copper is still protective of the existing and potential beneficial uses, but that information has not been submitted to the Los Angeles Water Board. The Los Angeles Water Board will reconsider the TMDL, if appropriate, upon submission of adequate information to justify a site specific objective.</p>
4.30	General Stakeholders	<p>According to Charles A. Cohen:</p> <p>Recognizing that this issue has sparked controversy on many levels, I would like to propose the following:</p> <p>That the State of California Water Control Board - before implementing any rules and regulations upon boat owners regarding bottom paint removal and treatment(s) - review and certify in an ongoing manner acceptable solutions to current bottom treatment processes. Such shall include announcing and publishing to the marine industry standards that have been established and scientifically validated by an independent, non-political research institution which would accomplish the goal of minimizing bottom paint as a source of pollution.</p>	<p>This comment was not raised before the Los Angeles Water Board. Nevertheless, it is addressed below.</p> <p>DPR is responsible for the regulation of pesticides, including antifouling paints. Boaters can access this information through DPR. Marina del Rey Harbor is an impaired water body, so the Los Angeles Water Quality Control Board is required to develop a TMDL and a corresponding plan to meet water quality standards in the Harbor. The implementation plan in this TMDL allows for the use of best management practices to improve water quality, but reductions in the use of copper-based paints may be necessary to fully achieve water quality standards. Although the copper-based paints used by boaters in the Harbor is legal under regulations issued by DPR, they are a contributing source of copper in the Harbor that has resulted in the water quality falling below standards necessary to protect aquatic life.</p>

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4.31	General Stakeholders	<p>According to Charles Michaels:</p> <p>The Regional Board wants to include the front basins in the TMDL, yet it underestimates the size of the Marina, and thus its loading capacity, by 25%.</p>	<p>This comment was previously made to the Los Angeles Water Board by the County of Los Angeles. The County of Los Angeles asserted that the Los Angeles Water Board underestimated the area of the Marina, resulting in a 20-percent underestimation of the loading capacity, while this commenter claims a 25-percent underestimation. The State Water Board disagrees that the Los Angeles Water Board underestimated the size of the Marina. It is uncertain how the County or this commenter measured the surface area of the Harbor or calculated an alternate loading capacity. No documentation has been provided to support the calculation of a different area or loading capacity. The Los Angeles Water Board's calculation is based on GIS using ESRI World Imagery as the basis for digitizing the Marina del Rey Harbor.</p>
4.32	General Stakeholders	<p>According to Charles Michaels:</p> <p>The Board used highly questionable copper sampling methods.</p>	<p>This comment was not raised before the Los Angeles Water Board. Nevertheless, the comment is unsubstantiated. The Los Angeles Water Board did not collect any water quality samples. The data relied upon in the development of the TMDL was collected by the County of Los Angeles and other agencies and followed all applicable quality assurance guidelines.</p>
4.33	General Stakeholders	<p>According to Charles Michaels:</p> <p>The Board did not have this TMDL Amendment peer reviewed by an independent third party.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the Los Angeles Water Board's response to comment 65.40 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="text-align: center;">See response to comment 16.2. The Regional Board</p>

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			<p>has complied with the external peer review requirements of Health and Safety Code section 57004 by relying on previously peer-reviewed scientific bases of the toxic pollutants TMDL.</p> <p>The scientific basis relied upon is detailed in a Los Angeles Water Board memorandum dated November 4, 2013. The letter confirms that “the Board has fulfilled the requirements of Health and Safety Code section 57004, and the revised toxic pollutants TMDL does not require further external peer review.”</p>
4.34	General Stakeholders	<p>According to Charles Michaels:</p> <p>The Board adopted the methodologies and analysis of the Shelter Island TMDL without addressing the important concerns raised in the peer review of that TMDL by Prof. Kenneth Bruland of UC Santa Cruz.</p>	<p>This comment was not raised before the Los Angeles Water Board. Furthermore, the Marina del Rey TMDL was based on the peer-reviewed and adopted Shelter Island Yacht Basin TMDL, not the peer review itself, and the Los Angeles Water Board is not required to respond to those peer reviewer’s comments. Nevertheless, Professor Bruland’s comments regarding the applicability of a site-specific objective are addressed in response to comments 1.7 and 4.14.</p>
4.35	General Stakeholders	<p>There will be unintended consequences stemming from new paints. Boat owners and the marine industry may develop and use materials that will be environmentally destructive. The best example is the use of paints containing copper in response to the ban on use of bottom paints containing organotin tributyltin.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 13.4 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board agrees that alternative biocides may result in new water quality impairments and such hull paints are therefore not supported by the Regional Board.</p> <p>The State Water Board notes that the Los Angeles Water Board does not prescribe the manner of compliance with its</p>



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			regulations or orders. The State Water Board also notes that the water quality objective for toxic substances in the Los Angeles Region’s Basin Plan states, “All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life.”
5.1	Alston & Bird	<p>Our chief concern stems from the Amendment’s language that names anchorages and boat owners as “responsible parties” for the load allocations for discharges of dissolved copper. <i>See</i> Final Basin Plan Amendment.</p> <p>This language should not be in the TMDL Amendment. “A TMDL does not, by itself, prohibit any conduct or require any actions.” <i>City of Arcadia v. State Water Res. Control Bd.</i> (2006) 135 Cal.App.4th 1392, 1414 [38 Cal.Rptr.3rd 373]. In fact, the California Third District Court of Appeal, the Ninth Circuit, and the United States Environmental Protection Agency have all insisted that a TMDL is merely a technical document designed to inform further administrative actions. <i>See, e.g., Pronsolino v. Nastri</i>, (9th Cir. 2002) 291 F.3d 1123, 1129 (“TMDLs are primarily informational tools.”); <i>City of Arcadia, supra</i>, 135 Cal.App.4th at page 1414; 40 C.F.R. § 130.2(i). Thus, the TMDL Amendment, itself, is not the appropriate place for the Regional Board to assign liability for discharges. For these reasons, we request that the State Board direct the removal of all language in the TMDL that assigns responsibility and allocates liability to individual anchorages and boat owners.</p>	The State Water Board agrees that a TMDL does not, by itself, prohibit any conduct, require any action, or otherwise impose legal liability on dischargers. The State Water Board also agrees that TMDLs are primarily informational tools. An important element of the information provided, is identification of those parties who have legal authority or control over sources of the pollutant of concern. These parties may be subject to future regulatory action if necessary to limit discharges of the pollutant and achieve water quality standards. The identified parties who control sources of the pollutant are identified “responsible parties” in this and other TMDLs throughout the State.
5.2	Alston & Bird	We also would like to express our concern that the administrative process has suffered from serious notice violations. Pursuant to the California Administrative	This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment.

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		<p>Procedures Act, a rulemaking agency must mail a notice of opportunity to comment to each person who has submitted written comments on the proposal, testified at a public hearing, or has asked to receive such notice. Cal. Code Regs. § 11346.4. Many commenters received no such notice. Additionally, only 4 of the 21 anchorages in the Marina received notice, and hundreds of boaters were not made aware of the changes being proposed and were not afforded an opportunity to comment before the Regional Board.</p>	<p>Please see the relevant portions of the Los Angeles Water Board’s response to comment 102.7 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>The Regional Board properly noticed the proposed TMDL revision. The Notice of Hearing contained a link to the correct web page and contained staff contact information if interested persons had any questions. The Notice of Hearing was posted to the Regional Board website and distributed to approximately 1000 interested persons on the Regional Board’s mailing lists. This information was also provided in a fact sheet that was mailed to 4,337 boat owners on November 25, 2013. In addition, Regional Board staff mailed a hard copy of the TMDL Staff Report to this commenter on December 12, 2013.</p> <p>On January 23, 2014, the Regional Board staff circulated a notice of public meeting and agenda for the February 6, 2014 meeting to all persons who had requested such notice in writing, and posted the notice of meeting and agenda on the Regional Board’s website.</p> <p>California Government Code § 11353 exempts the adoption or revision of water quality control plans from the requirements of Chapter 3.5 of the California Administrative Procedures Act, except for those requirements in § 11353(b). Therefore, Government Code § 11346.4 did not apply to the action by the Los Angeles Water Board and does not apply to this review by the State Water Board.</p>

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			<p>Please also see also the relevant portions of the Los Angeles Water Board’s response to comment 102.8 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>The Regional Board made significant efforts to ensure that all interested persons were aware of the February 6, 2014, meeting and the items to be addressed. There is no evidence that any person was prejudiced by any untimely notice of the February 6, 2014, meeting, or that additional notice would have enhanced the public’s opportunity to attend or participate.</p> <p>On January 23, 2014, the Regional Board staff circulated a notice of public meeting and agenda for the February 6, 2014 meeting to all persons who had requested such notice in writing, and posted the notice of meeting and agenda on the Regional Board’s website. This notice was provided more than 10 days in advance of the meeting, in compliance with the Government Code.</p> <p>The Government Code also requires regional water boards to notify all newspapers of at least 10,000 in circulation and all clerks of city councils and county boards of supervisors, in writing, of the agenda of a regional board hearing at least 10 days prior to the hearing. Regional Board staff provided written notice of the February 6, 2014, meeting to 96 newspapers in Los Angeles and Ventura Counties on the morning of January 27, 2014. This notification included The Argonaut, the local</p>

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			<p>newspaper of Marina del Rey. Regional Board staff provided written notice of the February 6, 2014, meeting to the clerks of city councils and county boards of supervisors within the region on the morning of January 28, 2014. Although the notice to the city and county clerks was sent out only 9 days in advance of the meeting, the notification was in substantial compliance with the Government Code requirements. (See <i>North Pacifica LLC v. California Coastal Com'n</i> (Cal.App.2Dist. 2008) 166 Cal.App.4<sup>th</sup> 1416.) In addition, many representatives of cities in the region were notified of the agenda on January 23, 2014, when the notice of public meeting and agenda was initially circulated. The Regional Board is not aware of any evidence that any of the cities or counties in the region were prejudiced in their ability to participate in the hearing to be held on February 6, 2014, because of the one day delay in notification.</p>
5.3	Alston & Bird	<p>The hearing notice issued by the Regional Board stated that any additional materials or written comments must be submitted by January 27, ten days before the hearing held on February 6, 2014. We submitted supplemental materials on January 27th per the instructions of the hearing notice that contained important scientific information that the Regional Board must consider prior to adopting the TMDL Amendment. (Attachment A: Letter to Regional Board, dated January 27, 2014, Attachment 1: Exhibits A-Q, and Attachment 2; List of Documents Linked in Webpage Sites.) The Regional Board improperly refused to admit the supplemental letter and its attachments into the administrative record, nor give them any consideration.</p>	<p>The Los Angeles Water Board did not consider the supplemental comment letter dated January 27, 2014 as it was not submitted in a timely fashion as required by the Los Angeles Water Board publicly noticed deadline for submitting written comments.</p> <p>The Notice of Hearing and Opportunity to Comment, dated November 5, 2013, stated that the deadline for submitting written comments was 5:00 p.m. on December 20, 2013. On December 6, 2013, the Los Angeles Regional Water Board issued a notice extending the comment period to 5:00 p.m. on January 15, 2014. In addition, Los Angeles Water Board staff advised the lessees in person of the correct January 15, 2014 comment deadline during their presentation to the lessees association on December 11, 2013.</p>

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			<p>The hearing notice and agenda for the Board meeting contained the following language: “To ensure a fair hearing and that the Board Members have an opportunity to fully study and consider written material, <u>unless stated otherwise</u>, written materials must be provided to the Executive Officer not later than 5:00 p.m. on January 27, 2014. <u>Please consult the agenda item description because certain items may have an earlier deadline for written submissions.</u>” (Emphasis added.)</p> <p>In the case of item 16, the agenda item description stated that written comments were due by January 15, 2014. The comment deadline provided in the Notice of Hearing and Opportunity to Comment was the stated deadline to submit written comments.</p> <p>Los Angeles Water Board staff explained the hearing notice language and gave the correct comment deadline to the Windward Yacht Center, one of the lessees, after seeing a notice released by the Windward Yacht Center with incorrect information that the comment deadline was January 27, 2014. Los Angeles Water Board staff also informed the County of Los Angeles Department of Beaches and Harbors of the misinformation and asked them to forward the correct information to lessees. Thus, based on the clear language in the hearing notice and agenda and Los Angeles Water Board staff’s further explanation, the lessees should have been aware of the correct comment deadline.</p>

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5.4	Alston & Bird	Regarding our original comment letter dated January 15, 2014, the Regional Board only responded to five of the fourteen comments we raised prior to the January 27 supplemental materials deadline. And the Regional Board did not reply to the remainder of the comments until February 4th – only a day and half before the February 6th hearing.	<p>See comment 5.3 regarding the purported January 27<sup>th</sup> deadline.</p> <p>California Code of Regulations section 3779, Title 23, requires the board to prepare written responses to the significant environmental issues raised in the comments received during the written comment period, and to provide those written responses to public agency comments at least 10 days prior to the board’s approval of the Substitute Environmental Documents. The Los Angeles Water Board provided responses to comments on CEQA related environmental issues on January 24, 2014. The Los Angeles Water Board provided written responses to the remaining comments on February 4, 2014, which complies with legal requirements.</p>
5.5	Alston & Bird	Overall, the process the Regional Board followed was not an informed process. They began their outreach to the primary affected parties, the boaters, at the very end of their internal process. Then they gave the boaters little time to understand the proposal, and offered no time to consider the evidence they were trying to present to help the Regional Board make a more informed decision.	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the relevant portion of the Los Angeles Water Board’s response to comment 05.6 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>Regional Board Staff began meeting with interested parties to discuss potential revisions to the TMDL based on the results of the studies in 2012. Once an approach had been finalized with the input of various scientists, public agency representatives, NGOs, and municipal and County staff, the Regional Board began outreach efforts to the boating community, beginning with a meeting with dockmasters and lessees prior to releasing the TMDL for public comments, and following up with</p>

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			<p>direct mailings to boat owners during the comment period.</p> <p>Please see also the relevant portion of the Los Angeles Water Board’s response to comment 02.9 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Regional Board agrees that education and outreach to the boating community is critical to achieving the TMDL. Regional Board staff participated in 14 outreach meetings and sent a mailing to 4,337 boat owners in Marina del Rey Harbor containing details regarding the proposed TMDL. The mailing list utilized was provided by the County of Los Angeles, Department of Beaches and Harbors as their most recent mailing list. The Regional Board plans to continue working with and educating the boating community as TMDL implementation proceeds.</p>
5.6	Alston & Bird	<p><i>Significant Economic Impacts.</i> We commented that the TMDL Amendment will create serious socio-economic impacts that will ripple throughout the local Marina del Rey economy. In particular, we stressed that boaters will suffer from increased compliance and maintenance costs as well as from being named “responsible parties.”</p> <p><i>Inadequacy of the Regional Board’s Response.</i> The Regional Board’s response is predicated on magical thinking and false data for three reasons. First, the Regional Board makes the bare assertion that, “It is not anticipated that the cost of complying with the proposed TMDL will result in a flight of boaters from Marina del Rey Harbor with a coinciding economic loss to local businesses.” The Regional Board cites no evidence – none whatsoever – to support this claim. Instead, in section 5.2,</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 19.2 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board disagrees that the proposed TMDL revisions constitute severe restrictions on the boating community. Economic factors have been evaluated during development of the proposed TMDL revisions. While increased costs may result from the proposed action, grant funding and timing of hull paint changes with normal maintenance activities will help to minimize expense to boaters. It is not anticipated that the cost of complying with the</p>

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		<p>it first claims it “anticipates” grant funding to assist small and lower income boaters. And then, in section 19.2, it definitively states that “grant funding ... <i>will</i> help minimize expense to boaters.” There is no identification of the source or amount of those grants, and they appear far from guaranteed. Second, the Regional Board assumes facts that are false, such as paint stripping happens “the boat’s normal course of operation and maintenance.” However, the reality is that boats are only stripped only every 25 - 40 years as old paint applications flake and that most small boat owners never strip their boats due to the excessive cost. Third, the Regional Board states that it is “highly unlikely” that it will impose waste discharge requirements (WDRs) on boaters, as it would be “costly” and inefficient.” If that is the case, why are WDRs included in the TMDL Amendment at all? Even though the mere threat of additional regulatory burdens may drive boaters elsewhere, the Regional Board does not explain this at all. In sum, the Regional Board’s responses to comments are deficient because they make inconsistent representations, lack a factual or evidentiary basis and do not take into account real-world considerations.</p>	<p>proposed TMDL will result in a flight of boaters from Marina del Rey Harbor with a coinciding economic loss to local businesses.</p> <p>Please see also the relevant portion of the Los Angeles Water Board’s response to comment 02.9 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board anticipates availability of grant funds, similar to that available in Shelter Island and Newport Bay, which should cover a significant share of the cost in repainting boat hulls. The Regional Board will ensure that paint conversions in Marina del Rey are identified as a preferred project in the Los Angeles Region to receive 319(h) grant funds in upcoming funding cycles. Assuming that grant funding is obtained, given that repainting costs would be incurred whether or not the proposed TMDL is adopted, boaters may in fact spend less money applying an alternative antifouling paint using grant money than they would reapplying copper based antifouling paint.</p> <p>The Los Angeles Water Board concluded, based on the evidence in the record, that the costs of implementing the TMDL are not likely to cause boaters to leave Marina del Rey Harbor.</p> <p>The State Water Board also finds that there are viable options for meeting the TMDL that will not result in an exodus of boaters away from Marina del Rey Harbor. There is concern that the spread of misinformation to boaters about the TMDL may cause boaters to leave the Marina.</p>

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			<p>The statement that the Los Angeles Water Board did not identify possible sources of grant funding is false. Clean Water Act section 319(h) funds are specifically discussed as a viable funding source in the Los Angeles Water Board's response.</p> <p>There is much discrepancy regarding the frequency at which boat hulls are regularly stripped of hull paint (see response to comment 5.9). Regardless, the frequency of current paint stripping will not hinder the ability to implement the TMDL or reduce the necessity to meet water quality standards in a timely fashion.</p> <p>The statement that most small boat owners never strip their boats is unsubstantiated.</p> <p>WDRs are one of the legal options available to the Los Angeles Water Board to implement the TMDL. The exclusion of this option from the Basin Plan Amendment would be negligent. The Basin Plan Amendment identified this potential regulatory mechanism, as do all Basin Plan amendments for TMDLs with nonpoint sources, in order to be transparent about potential implementation scenarios. As stated in the Los Angeles Water Board's response to comment, the use of WDRs is highly unlikely because they would be inefficient and costly to boaters. The evidence for the Los Angeles Water Board's finding that WDRs would be highly unlikely is the fact that of the approximately 50 TMDLs adopted in the Los Angeles Region, none implement nonpoint source load allocations with WDRs, with the single exception of commercial onsite wastewater treatment systems in Malibu. All other TMDLs implement load allocations through conditional waivers or</p>

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			<p>memorandums of agreement. For example, over 15 TMDLs name individual farmers as responsible parties and assign them load allocations. In these cases, the load allocations are implemented through conditional waivers, which are overseen by larger agencies, so that individual farmers are not directly regulated by the Los Angeles Water Board.</p>
5.7	Alston & Bird	<p><i>Infeasible Implementation Time Frame.</i> We raised the concern that the attainment date for the Marina del Rey Toxics TMDL is infeasible, especially in light of Shelter Island Yacht Basin where attainment is behind schedule even though the area is smaller and phased-in loading targets are more reasonable.</p> <p><i>Inadequacy of the Regional Board's Response.</i> The Regional Board's response is inadequate. To support its "ten-year schedule" the Regional Board notes that it met with "two boatyard owners in Marina del Rey" that estimated it would take 10 years to convert all the boats to non-copper paints. This very unscientific survey method of chatting up two (2) boatyard owners— just two - does not justify this timeline. Moreover, the questions posed to those boat owners was later refuted by them in written detail when they realized the previous casual discussion was taken totally out of context by the Regional Board. Yet, that more detailed robust information was ignored by the Regional Board. The TMDL Amendment will affect over 5000 boats in the marina and tens of thousands of Californians who will work, live, and play on and around the harbor. Furthermore, we note that the Board stated that it was working on preparations for this TMDL Amendment for "over 6 years." And yet, outreach to the</p>	<p>The Shelter Island Yacht Basin TMDL implementation is not behind schedule.</p> <p>The commenter implies that the Los Angeles Water Board did not perform due diligence in reaching out to a sufficient number of boat yard owners. Los Angeles Water Board staff spoke with owners of the two boat yards - the Boat Yard and Windward Yacht Center - at a meeting in October 2013 and in two follow up conference calls in November and December 2013. Given that these are the only major boat yards located in Marina del Rey Harbor and that Los Angeles Water Board staff engaged both businesses in their outreach efforts, the State Water Board concurs that Los Angeles Water Board appropriately included the information gained from this communication in developing the TMDL. In addition, the Los Angeles Water Board relied upon numerous published studies containing survey results of boaters and boat repair facilities and other information in order to set the TMDL implementation schedule, as referenced in the staff report.</p> <p>Since the 2013 meetings, the boatyards revised their estimates of their capacity to do paint conversions. But there are alternatives to complying with the load allocations set by the TMDL solely via paint conversions. The TMDL offers several alternative compliance demonstrations to</p>

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		<p>affected boat owners was only commenced at the very end of this process. Boaters enjoying the recreational values of the Marina were given very little time to understand the proposal.</p>	<p>accommodate different compliance strategies, including a combination of low copper paints, non-toxic paints, hull cleaning BMPs, slip liners, integrated pest management, etc. In addition, boaters could go to facilities outside of the Marina to have their boats repainted with nontoxic paints. Thus, the State Water Board finds that a ten-year schedule is reasonable and notes that the Los Angeles Water Board could revise the TMDL at any time if it were demonstrated that the implementation schedule was unattainable despite responsible parties' best efforts to comply.</p> <p>There are 4,754 total boat slips in Marina del Rey Harbor. The commenter does not provide evidence to support their reporting of the number of boats. Boats that are hauled out of the water when not in use likely do not discharge a substantial amount of copper into Marina del Rey Harbor and would not need to change their practices to comply with the TMDL.</p> <p>Please see the relevant portion of the Los Angeles Water Board's response to comment 05.6 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>Regional Board Staff began meeting with interested parties to discuss potential revisions to the TMDL based on the results of the studies in 2012. Once an approach had been finalized with the input of various scientists, public agency representatives, NGOs, and municipal and County staff, the Regional Board began outreach efforts to the boating community, beginning with a meeting with dockmasters and lessees prior to releasing the TMDL for public comments, and following up with direct mailings to boat owners during the comment period.</p>

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5.8	Alston & Bird	<p><i>Lack of Economic and Environmentally Protective Alternatives.</i> We provided information to the Regional Board regarding the lack of alternative non-biocide paints on the market; that such paints are soft, expensive, easily-damaged and have a short effective lifespan; and that boat yards are ill-equipped to haul boats with non-biocide (e.g. silicone) coatings.</p> <p><i>Inadequacy of the Regional Board's Response.</i> The Regional Board did not address our argument that there are no viable, non-biocide bottom paints available for boats in Marina del Rey. Instead, it merely pointed to the SED to placate our concerns. The SED, however, does not address site-specific considerations at Marina del Rey, including the fact that epoxy bottoms are not conducive to permanently moored vessels and that silicate paints will require significant investment, training and permitting (AQMD). The Regional Board also failed to give serious consideration to low biocide alternatives.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the relevant portion of the Los Angeles Water Board's response to comment 05.6 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Alternative antifouling paint options are available and have been tested in Shelter Island Yacht Basin (SIYB). It is anticipated that additional paint options will become available during the implementation of this TMDL. The Port of San Diego has shared results of studies and made paint recommendations available to the public on their website: <a href="http://www.portofsandiego.org/environment/copper-reductionprogram.html">http://www.portofsandiego.org/environment/copper-reductionprogram.html</a>. Additional information to aid in selecting an alternative hull paint and on integrated pest management can be found through the University of California website: <a href="http://ucanr.org/sites/coast/">http://ucanr.org/sites/coast/</a>.</p> <p>The statement that no alternative hull paints are available is false. Both soft and hard non-biocide paints are available on the market and were shown to be viable alternatives to copper-based paint both in their effectiveness and long-term cost in a study conducted by the Unified Port of San Diego. If this comment means that non-toxic paints are not "viable" because they do not, on their own, deter antifouling, then the State Water Board agrees with this comment and notes that the Los Angeles Water Board agrees as well. For example, according to the TMDL staff report, "Nontoxic hull coatings can be less effective at preventing the attachment of fouling organisms, so they should be used with a companion strategy to increase</p>

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			<p>their efficacy. Such companion strategies may include in-water hull cleaning (to remove built-up organisms), storage in a slip liner, or storage out of water in order to control fouling organisms.” The TMDL acknowledges that increased hull cleaning frequency may be prudent when using non-toxic coatings, particularly with boats that do not regularly leave the dock.</p> <p>Please also see the relevant portion of the Los Angeles Water Board’s response to comment 05.12 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Low copper paints may aid in achieving the TMDL as an interim step. This approach will begin the process of reducing the discharge of copper into the harbor may be particularly useful as an interim step in progressing towards the use of non-copper hull paints. The Department of Pesticide Regulations is currently tasked with determining an acceptable leach rate of copper from antifouling paints that will not result in the exceedance of water quality standards (California law AB 425). Results of this effort may aid in meeting the TMDL.</p>
5.9	Alston & Bird	<p><i>The TMDL Is Inconsistent with the California DPR Standard for Copper.</i> We highlighted the fact that the numeric target for dissolved copper in the water column is 3.1 mg/L whereas DPR suggested that a concentration between 6.0 and 9.4 mg/L may be more appropriated.</p> <p><i>Inadequacy of the Regional Board’s Response.</i> The Regional Board did not explain why the 6.0 to 9.4 mg/L range could not be implemented in Marina del Rey</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 64.2 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The 2009 DPR study reports the values of 6.0 and 9.4 µg/L as site-specific objectives (CCC and CMC)</p>

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		<p>Harbor. Instead, it dismissed our comment without any justification as to why it ignored the 2009 DPR study.</p>	<p>developed for San Francisco Bay; however these values are not stated as representative over other water bodies and there is no scientific basis to presume that SSOs for another water body would be applicable to Marina del Rey Harbor.</p> <p>The Los Angeles Water Board's response provides a clear justification as to why a <u>site-specific</u> objective developed for San Francisco is, by definition, not appropriate for other sites (i.e., waterbodies). This comment appears to disregard the response by the Los Angeles Water Board and thereby does not provide justification as to why the Los Angeles Water Board's response is inadequate. Absent a site specific objective for Marina del Rey Harbor, the Regional Water Board must adopt a TMDL that meets the water quality criteria for copper in the CTR, of 3.1 µg/L.</p>
5.10	Alston & Bird	<p><i>The TMDL Amendment Does Not Sufficiently Address Non-Point Sources.</i> We raised our concern that that the TMDL overlooked or downplayed many other sources of copper in Marina del Rey (e.g. urban storm water) and that it unfairly places burdens on boat owners and anchorages.</p> <p><i>Inadequacy of the Regional Board's Response.</i> The Regional Board overly simplifies the causes of copper toxins in Marina del Rey Harbor. In section 29.3, it implies that storm water runoff is the cause of copper in the harbor's sediment whereas copper-based bottom paints are the cause of copper dissolved in the water column. The data in the TMDL Amendment's supporting document does not corroborate such a clear distinction between sources of pollution.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the Los Angeles Water Board's response to comment 29.1 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>All sources of copper to Marina del Rey Harbor have been considered in developing the proposed TMDL. The original TMDL adopted in 2005 addresses upstream sources of copper. Based on an evaluation of additional data as part of the TMDL source analysis and linkage analysis, the proposed TMDL revision adds passive leaching from copper-based antifouling paints as a source of copper to the water column and assigns load allocations for this source.</p>

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			<p data-bbox="1192 354 1902 443">Please see also the Los Angeles Water Board’s response to comment 29.3 to Los Angeles Water Board Resolution R14-004, which states:</p> <p data-bbox="1236 488 1860 948">The original TMDL adopted in 2005 quantifies the contribution of the copper load in runoff from the watershed. The copper load in stormwater runoff is primarily bound to particulate matter. This copper settles to the bottom of the harbor in the sediment. Thus, the source of the copper in the sediment at the bottom of the basin is due to runoff, not copper-based hull paint as asserted by this comment. Rather, the proposed TMDL revision addresses a new impairment confirmed since the adoption of the original TMDL in 2005, which is copper dissolved in the water column. The proposed TMDL revision finds that copper-based hull paints are the primary source of this dissolved copper.</p> <p data-bbox="1192 992 1839 1117">Contrary to this comment’s assertion, the data in the TMDL Amendment’s supporting document do corroborate the Regional Water Board’s Response. See section 4.4.4 of the Staff Report.</p> <p data-bbox="1192 1161 1923 1414">The assumption that the bulk of the toxic contaminants in stormwater are bound to TSS is a simplification of real-world dynamics based on a preponderance of data and an understanding of system processes documented in literature. This approach was applied in the original TMDL and is maintained in the current revision. Pollutants entering Marina del Rey Harbor through stormwater inputs are addressed by the original TMDL. Dissolved copper entering Marina del</p>

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			<p>Rey Harbor from boat hulls was not addressed in the original TMDL. Data show boat hulls to be the major source of dissolved copper to the harbor and therefore, the source is addressed in the revised TMDL.</p>
5.11	Alston & Bird	<p><i>Scientific Data.</i> We explained the deficiencies in the scientific modeling on which the TMDL Amendment was based. Chief among these deficiencies was the lack of site-specific modeling and the failure to use EPA’s Biotic Ligand Model.</p> <p><i>Inadequacy of the Regional Board’s Response.</i> The Regional Board argues that it incorporated “preliminary site-specific modeling” from DPR into the TMDL Amendment and that EPA has not approved the Biotic Ligand Model for copper in saltwater as a water quality criteria. These responses expose two deficiencies in the Amendment’s underlying data. First, the fact that the Regional Board has only relied on “preliminary” site-specific data from another agency underscores that the Regional Board has forged ahead to establish this Amendment without proper consideration of Marina del Rey and its unique characteristics (size, depth, flow, marine life, among others). Second, the fact that EPA has not approved the Biotic Ligand Model does not mean that it cannot be used to inform the development of this Amendment. In fact, the State Board features the Biotic Ligand Model on its website as an integral part of developing water quality standards for freshwater copper standards. Given the size and importance of Marina del Rey to Southern California’s economy and culture, the Regional Board should employ the model to ensure the TMDL is appropriate, or at least explain why the Biotic Ligand Model should not be used to inform this</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 04.4 to Los Angeles Water Board Resolution R14-004, which states:</p> <p>The California Toxics Rule provides the applicable water quality criteria for copper in saltwater. The chronic copper salt water criterion of 3.1 µg/L is a national criterion and is based on species and sites that are reflective of sites throughout the nation, including Marina del Rey Harbor. A site-specific study has not been conducted in Marina del Rey Harbor that would enable evaluation of the appropriateness of a site-specific objective. Thus, it is not appropriate at this time to set a site-specific objective for copper in the water column of Marina del Rey Harbor.</p> <p>A Biotic Ligand Model (BLM) for copper in saltwater has not been approved by U.S. EPA for use as a water quality criteria. A date when a BLM for copper in saltwater may be approved by U.S. EPA is uncertain. The California Toxics Rule promulgated 3.1 µg/L as the Criterion Continuous Concentration (CCC) and 4.8 µg/L as the Criterion Maximum Concentration (CMC) for copper in saltwater. These criteria are the appropriate water quality objectives to protect aquatic life in Marina del Rey Harbor. Should U.S. EPA</p>



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		Amendment's development.	<p>adopt a saltwater BLM as the recommended water quality criteria and a site-specific study in Marina del Rey Harbor indicates that alternative water quality objectives, which may be higher or lower than the current objectives, are appropriate, the TMDL can be reconsidered at any time to incorporate such findings.</p> <p>Results of preliminary site-specific modeling of Marina del Rey Harbor presented in a 2009 Department of Pesticide Regulation (DPR) report suggest a potential FCC (equivalent to CCC) ranging between 2.9 and 5.3 µg/L and a potential FAC (equivalent to CMC) of 1.5 – 8.2 µg/L. While this modeling has not been vetted by the Regional Board, the criteria promulgated in the California Toxics Rule (CCC: 3.1 µg/L, CMC: 4.8 µg/L) fall within the range suggested by the DPR study. California Toxics Rule criteria are designed to be protective and thus it is consistent that the 3.1 µg/L proposed as the TMDL numeric target and the corresponding CTR criterion falls toward the lower range of the FCC presented in the 2009 DPR report.</p> <p>The TMDL may be revised at any time to incorporate the results of new scientific study, including a site-specific objective if appropriate.</p> <p>The statement that the Los Angeles Water Board has only relied on “preliminary” site-specific data from another agency is unfounded. The TMDL is based on site-specific data. Data identifying impairments in the TMDL and the sources of toxic pollutants to Marina del Rey Harbor are not preliminary. The Clean Water Act §303(d) requires these constituents to be</p>

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			<p>listed as impairing Marina del Rey Harbor and the establishment of TMDLs to address these impairments.</p> <p>The commenter notes that the State Water Board supports the use of the Biotic Ligand Model (BLM) for developing <u>freshwater</u> water quality standards. The freshwater BLM has been recommended for use by the U.S. EPA in its Aquatic Life Ambient Freshwater Quality Criteria- Copper 2007 Revision, whereas the saltwater BLM has not yet been approved.</p>
5.12	Alston & Bird	<p><i>Non-Compliance with California Government Code § 11346.3.</i> We commented that the TMDL Amendment does not consider its impact on businesses, specifically whether it will create or eliminate jobs in California.</p> <p><i>Inadequacy of the Regional Board’s Response.</i> The Regional Board fails to distinguish between a “water quality control plan and guideline” and a TMDL. A TMDL, much less a TMDL Amendment, is a component of a water quality control plan, not a plan in and of itself. Therefore, the Regional Board should have to comply with Cal. Gov. Code § 11353.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 65.25 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Chapter 3.5 of the California Government Code, which includes section 11346, does not apply to “the adoption or revision of water quality control plans and guidelines....” (Cal. Gov. Code § 11353). Therefore, the Regional Board is not required to comply with Government Code section 11346.3 in adopting the proposed TMDL revision.</p> <p>The commenter is incorrect that the exemption for water quality control plans and guidelines in Chapter 3.5 of the California Government Code excludes TMDLs. As noted in the comment, a TMDL is a component and revision of the water quality control plan. The entirety of a water quality control plan, including any TMDLs, is subject to the referenced exemption.</p>

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5.13	Alston & Bird	<p><i>Non-Compliance with California Water Code § 13242.</i> We pointed out that the TMDL Amendment failed to meet the California Water Code for two reasons. First, it lacked a schedule for implementation. Second, it lacked a description of surveillance.</p> <p><i>Inadequacy of the Regional Board's Response.</i> The Regional Board claimed that a “deadline” constitutes a “schedule.” The dictionary eviscerates this response. A schedule is a “plan of procedure . . . with reference to the sequence of and time allotted for each item or operation necessary to its completion.” The plain meaning of schedule thereby implies many different deadlines along a plan of procedure. The Regional Board seemingly recognized its error by adding an “interim milestone” to implement dissolved copper load allocations, but this milestone alone is insufficient for a TMDL Amendment that will take at least ten years to implement.</p>	<p>These comments were previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 65.27 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The deadline of March 22, 2024 constitutes a schedule for attaining the dissolved copper allocations. The proposed TMDL revision has been revised to include an interim milestone to develop a regulatory mechanism to implement the dissolved copper load allocations.</p> <p>The State Water Board disagrees with the commenter’s interpretation of the word schedule as mandating multiple compliance points. That said, Table 7-18.2 of the TMDL provides the implementation schedule to achieve the water quality criteria for copper in Marina del Rey Harbor. Fourteen different deadlines are included in the implementation schedule.</p> <p>Please also see the Los Angeles Water Board’s response to comment 65.28 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Proposed TMDL revision includes monitoring requirements to measure attainment of the dissolved copper load allocations.</p> <p>This comment does not provide justification as to why the Los Angeles Water Board’s response regarding surveillance is inadequate.</p>

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5.14	Alston & Bird	<p><i>Non-Compliance with State and Federal Antidegradation Policies.</i> We noted that the use of alternative biocide or non-biocide paints has been untested, and therefore, the Regional Board could not confirm that water quality would be maintained or protected. In the long-run, these alternatives may spur new forms of pollution or encourage propagation of invasive species.</p> <p><i>Inadequacy of the Regional Board's Response.</i> The Regional Board admits that there is a "lack of evidence that non-biocide paint coatings will cause degradation of the existing water quality." We tried to provide some evidence to the Regional Board to consider on the water quality problems and the impact to important environmental values protected by Porter-Cologne and the Clean Water Act but the Regional Board refused to hear it. Had the Regional Board been truly interested in input from boaters and allowed sufficient time, we would have had the time to develop additional factual materials so that the Regional Board would not feel somehow compelled to pursue a TMDL based on a "lack of evidence."</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's responses to this comment. Please see the Los Angeles Water Board's response to comment 65.29 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The revision to the TMDL is necessary to achieve the water quality standards for Marina del Rey Harbor. There is a lack of evidence that non-biocide paint coating will cause degradation of the existing water quality and substantial evidence that biocide paint coatings do cause degradation and negative impacts to beneficial uses. Given the available evidence, the Regional Board determined that the revised TMDL is appropriate and necessary to achieve water quality standards.</p> <p>The Los Angeles Water Board considered all information that was submitted in a timely fashion. As stated in response to comment 5.3, the commenter did not submit their materials to the Los Angeles Water Board prior to the publicly noticed deadline and they were not included in the record, nor responded to by the Board.</p> <p>The Los Angeles Water Board is not compelled to pursue a TMDL based on a lack of evidence that alternatives to copper-based paints are harmful to the environment. The Los Angeles Water Board was required to adopt a TMDL because the Marina del Rey Harbor does not meet water quality standards and is listed as an impaired water body under Clean Water Act section 303(d). A reduction in the use of copper-based paints is one method of compliance with the TMDL, because there is no evidence that alternatives will result in degradation of water quality.</p>

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5.15	Alston & Bird	<p><i>Potential for Impacts on Endangered or Threatened Species.</i> We emphasized why copper antifouling paints are used—to reduce the growth and transportation of invasive species on hulls. We asked the Regional Board to examine the TMDL Amendment’s effect on the potential spread of invasive species to the detriment of California’s threatened species.</p> <p><i>Inadequacy of the Regional Board’s Response.</i> The Regional Board’s only response is that there is a “lack of evidence that non-biocide paint coating will cause degradation.” This is precisely our point. The Regional Board should be able to point to at least something—a study, model, etc.—that indicates that Marina del Rey will not experience degradation due to the use of non-biocide coatings. Rather, the Regional Board has ignored evidence that the use of that the use of non-biocide coatings will lead to an influx of invasive species.</p>	<p>The Los Angeles Water Board considered the spread of invasive species in the Substitute Environmental Document and concluded that it was a potentially significant impact. Please see the Los Angeles Water Board’s response to comment 5.8 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The SED acknowledges that increased growth of fouling organisms and invasive species could result from the switch from copper based anti-fouling paint. The SED identifies mitigation measures to address that potential impact. The SED properly identifies hull cleaning practices as one potential mitigation measure for potential impacts related to invasive species. (See Chapter 6.2.2, pp. 61-76).</p> <p>In addition, the SED includes a statement of overriding considerations which states that in view of the entire record supporting the TMDL, the specific economic, legal, social, technological, and other benefits of the proposed TMDL outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances.</p> <p>Also see the Los Angeles Water Board’s response to comment 6.2 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">Much research has been done and is ongoing regarding invasive species transport and the effects of antifouling paints on such transport. The Regional Board supports an integrated pest management approach as a means to</p>

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			reducing the risk of invasive species transport. Recent research indicates that some invasive species are copper-tolerant and thus copper paints may not be effective in reducing the transport of these organisms. In addition, a healthier biological community in Marina del Rey Harbor may improve resistance to invasive species invasions.
5.16	Alston & Bird	<p><i>Non-Compliance with California Government Code § 11353.</i> We highlighted the fact that the Regional Board’s supporting documents do not provide a summary of the necessity for the TMDL Amendment as required by law. In fact, the only time the supporting documents even used the word “necessary” was to point out the void of site-specific analyses: “Refinement of the model may be necessary as efforts to reduce copper pollution in Marina del Rey Harbor proceed and our understanding of the site-specific factors affecting copper in Marina del Rey improves.”</p> <p><i>Inadequacy of the Regional Board’s Response.</i> The Regional Board’s response is insufficient. We question the Regional Board’s assertion that the basin plan amendment need not contain a summary of its necessity until after approval by the State Board. Isn’t the purpose of the administrative process to allow the general public to be engaged in the lawmaking process? By reserving the right to add the “necessity” language from the public until the last minute, the Regional Board has refused to allow the public to comment on a crucial part of the TMDL Amendment.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 65.32 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">This provision applies after adoption of the TMDL by the State Water Board, and the basin plan amendment is submitted to the Office of Administrative Law. The summary is not required at this time. As detailed in the TMDL staff report, Basin Plan amendment, tentative resolution, and response to comments, however, the TMDL is necessary to comply with section 303(d)(1)(C) of the Clean Water Act. The standard is based on the CTR.</p> <p>The commenter has provided no new information supporting the claim that the TMDL is not compliant with California Government Code §11353. The Los Angeles Water Board provided information to support the conclusion that the TMDL is necessary to comply with the Clean Water Act. There is no right of the public to comment on the determination of “necessity”, as defined by Government Code § 11349, of a Basin Plan amendment. This determination is made by the Office of Administrative Law.</p>

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5.17	Alston & Bird	<p><i>Non-Compliance with CEQA.</i> We stressed that the Regional Board failed to meet several CEQA requirements. In particular, the Regional Board failed to consider economic losses to businesses, the impacts of alternatives, a reasonable range of site-specific factors, and the proper scope of cumulative effects.</p> <p><i>Inadequacy of the Regional Board's Response.</i> The Regional Board disagreed with our characterization of the SED, but it did not explain why its assessment failed to consider alternatives or potential environmental impacts. It merely recounted the various sections of the SED as if listing the title of each chapter was sufficient to meet all of its CEQA responsibilities. On its face, such treatment is deficient.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board's response to this comment. Please see the Los Angeles Water Board's response to comment 65.36 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board disagrees that the SED fails to include an analysis of the impacts of the alternatives. The SED analyzes three program level alternatives and more than 20 project level alternatives. The SED properly finds that program alternative 1 is the most environmentally feasible alternative, based on the fact that the other two program alternatives do not meet the project purpose and would allow toxic pollutants to continue impairing Marina del Rey Harbor waters. (See Chapter 4). The potential for economic losses to businesses in Marina del Rey if boaters choose to dock their boats at nearby harbors is not a CEQA-relevant inquiry. The CEQA inquiry relates to what significant adverse environmental impacts are foreseeably attendant with the reasonably foreseeable means of compliance with the regulation.</p> <p>Please also see the Los Angeles Water Board's response to comment 65.37 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">Although the Regional Board does not mandate the manner of compliance, foreseeable methods of compliance are well known and site-specific factors are considered in the SED to the extent possible. For example, flushing rates</p>

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			<p>of the Marina are accounted for in the modeling used for the dissolved copper linkage analysis. This SED, including the TMDL staff report the Basin Plan amendment, and tentative resolution should be considered as a whole when evaluating compliance with the Public Resources Code.</p> <p>Please also see the Los Angeles Water Board’s response to comment 65.38 to Los Angeles Water Board resolution R14-004, which states:</p> <p style="padding-left: 40px;">The Regional Board disagrees that the SED does not have a proper scope of cumulative effects. The impacts to recreation due to dredging are analyzed in the SED in Chapter 6.2.2 at page 100.</p> <p>This comment appears to disregard the responses by the Los Angeles Water Board, including the specific response to the question of economic losses as an environmental impact, impacts of alternatives, site-specific factors, and cumulative effects, and thereby does not provide justification as to why the Los Angeles Water Board’s response is inadequate.</p> <p>Because this comment does not identify the commenter’s specific concerns with the SED, other than to provide general categories of concern, the State Water Board is unable to provide a more specific response.</p>
5.18	Alston & Bird	<p><i>Lack of Peer Review.</i> We underscored that the TMDL Amendment must not be adopted until it has undergone external peer review as required by law.</p> <p><i>Inadequacy of the Regional Board’s Response.</i> The Regional Board claims it has satisfied external peer review requirements by relying on previously peer-reviewed</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 65.40 to Los Angeles Water Board Resolution R14-004, which states:</p>

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		<p>scientific bases of the toxic pollutants TMDL. The Regional Board, however, did not expressly reference what, in fact, were the “previously scientific bases.” Thus, there was no way to ensure that we were reviewing the correct sources. If the Regional Board was referring to the Shelter Island studies, this is inappropriate since these documents do not meet the external peer review standard since they were prepared for a different body of water and Marina del Rey, as a vast man-made marina, requires separate consideration.</p>	<p>See response to comment 16.2. The Regional Board has complied with the external peer review requirements of Health and Safety Code section 57004 by relying on previously peer-reviewed scientific bases of the toxic pollutants TMDL.</p> <p>The revised Marina del Rey Harbor toxic pollutants TMDL contains a scientific approach to regulating toxic pollutants in sediment that is drawn from the original toxic pollutants TMDL and subsequent metals and toxic pollutants TMDLs for other waterbodies in the Region. The scientific approach for addressing the metal impairment in the water column draws from a peer-reviewed TMDL adopted by the San Diego Regional Water Quality Control Board (San Diego Water Board). The revised TMDL also contains revisions to non-scientific elements of the TMDL, which do not require external peer review.</p> <p>The State Water Board agrees with the approach taken by the Los Angeles Water Board. It is appropriate to apply a previously a peer-reviewed model, such as the one developed for Shelter Island Yacht Basin, and refine it with site-specific data for use in TMDL development. Utilization of a model in this fashion ensures the scientific approach has been validated.</p>
5.19	Alston & Bird	<p><i>Preempted by FIFRA.</i> We pointed out that, with this TMDL Amendment, the Regional Board will usurp the authority of both DPR and EPA which have both approved the sale of copper-based hull paints. The Regional Board, alone, cannot effectively foreclose a class of products that have been sold and used in California for decades.</p>	<p>This comment was previously made to the Los Angeles Water Board. The State Water Board reviewed and agrees with the Los Angeles Water Board’s responses to this comment. Please see the Los Angeles Water Board’s response to comment 80.7 to Los Angeles Water Board Resolution R14-004, which states:</p>

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		<p><i>Inadequacy of the Regional Board's Response.</i> The Regional Board dances on the head of a pin in this comment response and wholly ignores the reality of the TMDL Amendment's effects. In reality, the TMDL Amendment prevent boat owners from buying copper-based paints. As such, copper-based paints, which have been approved by both EPA and DPR, will not be sold. The Regional Board should further explain how its actions will not, in effect, constitute a ban on the sale of copper-based paint.</p>	<p>The Regional Board cannot prescribe the manner of compliance with its orders. The proposed TMDL revision is not a ban on copper-based paint and there are many potential means for attaining the required copper reductions.</p> <p>Please see also the relevant portion of the Los Angeles Water Board's response to comment 33.1 to Los Angeles Water Board Resolution R14-004, which states:</p> <p style="padding-left: 40px;">The TMDL does not ban copper, it requires an 85% reduction in discharge of dissolved copper from antifouling paint.</p> <p>This 85% reduction can be met in a variety of ways, such as by eliminating copper-based paints on 85% of the boats in the harbor, by using low leach copper-based paints, hull cleaning BMPs, or dry storage of boats.</p> <p>That a product may be legal does not imply suitability for use in all applications. The dissolved copper impairment in the water column of Marina del Rey Harbor necessitates the implementation of antifouling measures that will not cause exceedance of water quality standards.</p>
5.20	Alston & Bird	<p>In conclusion, the Lessees Association respectfully requests that the State Board direct the Regional Board to review and revise the TMDL Amendment and address all the concerns raised and direct the removal of all language in the TMDL that assigns responsibility and allocates liability to individual anchorages and boat owners.</p>	<p>Comment noted.</p>
6.1	Charles Michaels	<p>Responses to the Mr. Michaels first letter, dated May 13, 2014, are addressed in Comments 4.1 through 4.35. This comment and response addresses Mr. Michaels second</p>	<p>This comment was not raised before the Los Angeles Water Board. The Los Angeles Water Board is required to develop a TMDL addressing copper in the Marina del Rey Harbor that</p>

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		<p>letter submitted on May 13, 2014:</p> <p>This is a supplement to my letter of May 9, 2014 that was sent to State Water Resources Control Board on the referenced subject.</p> <p>Yesterday, I was talking with a prominent, successful businessman in Marina del Rey, who is both a lessee of the County of Los Angeles and an operator of a major facility in the marina. He told me that he was unable to secure loan financing for a major remodeling of his facility because of the proposed Amendment and its “responsible party” designation. He added that he was attempting to secure alternate financing, but that it was problematical at this point.</p> <p>This businessman said that the lack of financing and combination of potential environmental liability for copper in the marina’s water and sediment was enough for him to reconsider pursuing a lease extension with the County at this time.</p> <p>The Regional Board’s response and its economic analysis throughout this process has been to deny that there would be a major economic impact to Marina del Rey. It simply stated that it “is not anticipated that the cost of complying...will result in a flight of boaters” with a coinciding economic loss to businesses.</p> <p>My conversation yesterday is more evidence that the Regional Board’s analysis is flawed. Its economic analysis assumes the availability of grant funding, which is not guaranteed, but in any event there won’t be grant</p>	<p>identifies the entities responsible for compliance because the evidence supports the conclusion that it is impaired. The Water Boards cannot control the actions of other entities, such as lenders.</p> <p>See response to comment 4.3, for a description of the significance of designation as a “responsible party” in the TMDL.</p> <p>See response to comment 4.1, for a description of the notice provided by the Los Angeles Water Board and the opportunities for public participation in adoption of the TMDL.</p> <p>See response to comments 4.13 and 5.6, for details regarding anticipated grant funding.</p>

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		<p>funding to help businesses as I just described. If the Regional Board’s economist had taken the time to actively pursue an informed process, meet with major businesses and anchorages in the marina, actively collaborate in the economic impact, the Board would have discovered the “real world” considerations facing Marina del Rey. Moreover, the economic report was not released to the public in time for citizens to make an informed analysis and rebuttal. This is but another example of a series of due process “oversights,” which the Regional Board further fails to acknowledge or remedy through an extension of the process.</p> <p>For the reasons stated in my letters and other with similar views, I am therefore asking the State Water Resources Control Board (the “State Board”) to reject the proposed TMDL Amendment in its current form. I further request that the State Board direct the removal of all wording in the TMDL Amendment that assigns responsibility and allocates liability to individual anchorages and boat owners.</p>	
7.1	Steve Myles	<p>Please extend the commentary period. I never received notice. Thank you.</p>	<p>This commenter provided comments to the Los Angeles Water Board and provided this comment to the State Water Board seventeen days prior to the end of the comment period – evidence that the commenter did receive notice of the proposed action during both the Los Angeles Water Board process and the State Water Board review process.</p>
8.1	Larry Silver	<p>Yes I support your plan to restrict Copper in the bottom paint for boats. I am a boat owner of a 68 foot power boat in Marina del Rey D Basin #166 that is in immediate need of new bottom paint, which I intend to have done in the next 2 or 3 months. I have a bid/estimate of \$16,505.00 from the local Windward Yacht haul out yard that will</p>	<p>This comment was not raised before the Los Angeles Water Board and is not relevant to the TMDL.</p> <p>The Regional Board anticipates availability of grant funds, similar to that available in Shelter Island and Newport Bay, which should cover a significant share of the cost in repainting</p>

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		<p>completely comply (after careful reading) with all your new regulations and requirements. My usual costs have historically for the last 14 years been about \$3,500 for bottom paint, which lasts on average 3-4 years.</p> <p>In other words, in order to comply with your requirements it will cost me \$13,005 more than usual. I know from your frequent description and discussion in your literature and press releases that you have a fund to reimburse owners for the extra costs of compliance. This is similar to what you did in San Diego. I am therefore requesting you immediately send me a check to cover the \$13,005 additional costs. I need the check in advance as the yard requires me to pay in full before I leave the yard. You are welcome to make the check payable to Windward Haul Out Yard, and to send it to them directly. I can supply you with their address.</p> <p>At your request, I can supply you with a copy of the yards estimate and/or invoice, and any information you need about my boat (name, document number, etc). If you have any questions you can reach me at the above letter-head phone number.</p> <p>If you are unable to immediately send the \$13,005 check (as described above), then please advise me if I should deduct the difference from my California Income tax or from my Los Angeles County boat property tax. <b><u>Note that I will need your answer on your letter-head and in writing.</u></b> Also, please advise me of the following. (A) I am advised that your required new paint (the 2 part epoxy) will only last about one year. How do you plan to reimburse me if the new paint only lasts one year rather</p>	<p>boat hulls. The Regional Board will ensure that paint conversions in Marina del Rey are identified as a preferred project in the Los Angeles Region to receive 319(h) grant funds in upcoming funding cycles. Individual boaters would apply for funds through a process administered by the grantee.</p>

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		<p>than the standard 3-4 years, and (B) How will you reimburse me for the extra cost of bottom cleaning. You new paint requires my hull be cleaned about each 14 days rather my 14 years of experience that normal hull cleaning by a diver lasts about one month during the summer and 5-6 weeks during the winter.</p> <p>I will thank you in advance for protecting the environment and for the prompt receipt of your check, and/or your letter answering to where I should make the deduction. Also note that as a citizen, and you are a regulated government agency, I am legally entitled to your answers both promptly and in writing.</p>	
9.1	Whitney Green	<p>I am writing to voice my support for these new regulations....I own a 43' sailboat in Marina Del Rey, and think we boaters should be the most concerned about the quality of our oceans.</p> <p>I am always amazed at the rabid concern for one's checking account over the good of this fragile globe we live on for a brief moment in time.</p>	Comment noted.

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