

The Ocean Conservancy · Natural Resources Defense Council · Friends of the Sea Otter ·
California Coastkeeper Alliance · Defenders of Wildlife · Surfrider Foundation ·
United Anglers of California · American Cetacean Society · San Luis Obispo Coastkeeper ·
Heal the Bay · Pacific Coast Federation of Fishermen's Associations · San Diego Baykeeper

August 31, 2005

Arthur Baggett, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: California Ocean Plan, Areas of Special Biological Significance (ASBS)
Waste Discharge Prohibition

Dear Chairman Baggett and Members of the Board:

The State Water Resources Control Board (SWRCB) is at a crossroads in its approach to managing California's Areas of Special Biological Significance (ASBSs). On the one hand, there are more than 1,650 illegal discharges into ASBSs, many of which are related to nonpoint source pollution and stormwater runoff.¹ Some of those responsible for these discharges are unwilling to commit the resources to doing what is necessary to eliminate their discharge, and are pushing for either relaxed enforcement of the Ocean Plan's waste discharge prohibition for ASBSs, or for a wholesale revision of the state's policy in dealing with these discharges.²

On the other hand, there are compelling reports from two national Oceans Commissions, an Ocean Action Strategy from California's Resources Agency and Environmental Protection Agency, and the initial reports and remarks from California's new Ocean Protection Council, all of which agree that the oceans and coasts are in serious trouble, and "major changes are urgently needed in the way we manage them."³ All three of these reports agree that coastal waters are becoming severely degraded by polluted runoff and nonpoint sources,⁴ and the USCOP report specifically calls for States to adopt enforceable policies to handle these pollution sources.⁵ Furthermore, the public is both concerned about the pollution of coastal waters, and prepared to

¹ Southern California Coastal Water Research Project, "Final Report: Discharges into State Water Quality Protection Areas" (July 2003).

² See, e.g., SWRCB, Final Functional Equivalent Document: Amendment of the Water Quality Control Plan, Ocean Waters of California (March 2005, amended April 2005) at 81 (Responses to Comments).

³ U.S. Commission on Ocean Policy, *An Ocean Blueprint for the 21st Century* - Final Report (2004) (USCOP Report) at p.4.

⁴ Pew Oceans Commission, *America's Living Oceans: Charting a Course for Sea Change* (May 2003) at 56, 60, USCOP Report at p.213

⁵ USCOP Report at p. 218.

do something about it. California's Ocean Action Strategy articulates this in unequivocal language:

Californians have strong concerns about the protection of ocean, coastal, and watershed resources which has been verified by recent polling conducted by the Public Policy Institute of California. They understand the challenges faced in managing these resources and are willing to support strong actions to protect them. The significant contribution of ocean dependent industry to the state's economy makes a compelling argument that an investment in ocean and coastal management and protection is an investment in the economic well-being of this state. The need for action is clear.⁶

Given this call to arms, it is unthinkable that California would now act to diminish long-standing, strong protection for its most valuable coastal resources – ASBSs. These areas, which are home to the State's most unique and sensitive marine communities, present both a challenge and an opportunity. The challenge is that numerous existing sources of pollution into ASBSs threaten their water quality, habitats, and biological communities. The opportunity is that an effective means of protecting these areas already exists – the Ocean Plan's prohibition against the discharge of waste into ASBSs.⁷

The undersigned organizations are concerned, however, that the Board is poised to take an approach that would both sidestep the challenge of stopping the pollution of ASBSs and decline the opportunity to make use of one of the most effective tools in its arsenal. Specifically, the Board appears inclined to develop an exception to the Ocean Plan's waste discharge prohibition that would cover stormwater runoff and nonpoint sources of pollution to ASBSs. We oppose this approach. Although exceptions that are specifically designed to achieve "no discharge" of pollutants over a clear timeframe may be appropriate for individual dischargers under certain limited circumstances, an exception that relieves an entire category of dischargers from compliance with a critical rule risks significantly weakening that rule, and removing any meaningful protection that it provides.

The crisis in our coastal ocean health, as described by the Oceans Commissions, mitigates strongly in favor of strict enforcement of the rule. It is unfortunate that – faced with more than 1,650 illegal discharges – the Board's first acts were to attempt to soften the waste discharge prohibition⁸ and then to develop exceptions to it.⁹ This precedent sets up an

⁶ California Resources Agency and California Environmental Protection Agency, *Protecting Our Ocean – California's Action Strategy* (September 2004).

⁷ State Water Resources Control Board, "Water Quality Control Plan – Ocean Waters of California" (2001) at III.E.1.

⁸ State Water Resources Control Board, Division of Water Quality, "Informational Document: Public Scoping Meeting for the Proposed Amendment of the Water Quality Control Plan for Ocean Waters of California" (December 2003).

⁹ State Water Resources Control Board, Resolution No. 2004-0052, Approving and exception to the California Ocean Plan for the University of California Scripps Institution of Oceanography discharge into the San Diego Marine Life Refuge Area of Special Biological Significance and adopting a mitigated negative declaration (July 22, 2004).

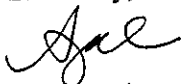
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assumption on the part of the dischargers that the Board does not take the waste discharge prohibition seriously and will be susceptible of pressure to decline meaningful enforcement. We assume that this is not the outcome that the Board or the Schwarzenegger Administration desires, and we encourage the Board to shift its posture away from exceptions and toward enforcement.

We recognize that complete compliance for every discharger may not occur immediately. As such, we propose a practical framework that allows cities and other entities that are not complying with ASBS protections to submit a "Stewardship Remedy" to attain compliance over a reasonable amount of time. Cities could choose from a range of options to meet their obligations, and select those that are most appropriate and cost-effective in light of local circumstances. When approved by the State Water Board or by a Regional Water Board, a city or other discharger would receive a Time Schedule Order, which would serve to guide its efforts and constitute a formal commitment to protecting the most sensitive coastal areas in the State. Depending on the circumstances, and the feasibility of compliance options, cities could have months or even years to implement its chosen plan.

We are confident that with the continued leadership of your staff, including Dominic Gregorio, these precious areas can be maintained and restored, and that California can continue to proudly lead the nation in protecting coastal health. The waste discharge prohibition is the only effective means of ensuring comprehensive protection of ASBSs. It is this type of strong management that the Ocean Commission reports envision, and it is this type of strong action that both the SWRCB's Ocean Plan and Governor Schwarzenegger's Ocean Action Strategy require.

Sincerely,



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