

Draft Final Staff Report
Proposed Non-Substantive Amendments
to the California Ocean Plan

September ~~March~~ 2009

State Water Resources Control Board
Division of Water Quality

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*Note: Yellow highlights indicate changes made from the March 2009 version after reviewing comments from the public.

List of Acronyms

ASBS	Areas of Special Biological Significance
Cal/EPA	California Environmental Protection Agency
CEQA	California Environmental Quality Act
CWA	Clean Water Act
CWC	California Water Code
NPDES	National Pollutant Discharge Elimination System
OAL	Office of Administrative Law
POTW	Publicly Owned Treatment Works
SWRCB	State Water Resources Control Board
TRW	Triennial Review Workplan
U.S.C.	United States Code (U.S.C.)
U.S. EPA	United States Environmental Protection Agency

I. INTRODUCTION

This staff report describes proposed non-substantive amendments to the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) and is organized as follows:

Section I provides a brief overview of proposed draft amendments; Section II describes the planning process and statutory requirements applicable to the proposed amendments; Section III describes each of the proposed amendments in detail and the text within the Ocean Plan that would be changed (draft amendment); References are presented in Section IV followed by Appendix A that presents the entire Ocean Plan with all proposed changes.

The State Water Resources Control Board (State Water Board) first adopted the Ocean Plan in 1972, which set water quality standards to protect the beneficial uses of all ocean waters of California and prescribed programs to implement these standards. To ensure that the established standards are adequate and continue to be protective of marine life and human health, both Federal law¹ and State law² require that the Ocean Plan be reviewed at least once every three years.

The State Water Board most recently updated the Ocean Plan in 2005. During 2005, the State Water Board also directed staff to review a series of issues identified in the 2005-2008 Triennial Review Workplan.³ Certain issues dealt with improving the clarity and usefulness of the Ocean Plan by correcting typographical and grammatical errors, correcting anachronisms, adding maps, and reflecting current laws and regulations.

State Water Board staff has prepared this staff report for the following proposed amendments to the 2005 Ocean Plan:

1. Clarify that metals are expressed as total recoverable metals;
2. Remove Section III (F)(1) on compliance schedules, which is outdated and unnecessary, and add Section III (G) (1) on compliance schedules in National Pollutant Discharge Elimination System (NPDES) Permits;
3. Correct toxicity definitions and references in Appendix I;
4. Include maps of California's ocean waters, bays, and estuaries; and
5. Update the list of exceptions in Appendix VII in order to include:
 - a. exceptions for discharges to Area(s) of Special Biological Significance, which were approved after the adoption of the 2005 Ocean Plan;
 - b. the 1979 conditional exception for untreated wet weather discharges from the City and County of San Francisco's combined storm and wastewater collection system, which was inadvertently omitted from the 2005 Ocean Plan; and
 - c. the 1988 exceptions for total chlorine residual for nine coastal power plant discharges, which were also inadvertently omitted.

¹ Clean Water Act, Section 303(c)(1)

² California Water Code Section 13170.2(b)

³ State Water Board, 2005

Amendments to the Ocean Plan must comply with state and federal public participation requirements and state laws governing environmental and peer review. However, the proposed changes to the 2005 Ocean Plan, listed above, are strictly editorial or administrative in nature and will not have any regulatory effect. Because there is no possibility that the proposed edits may have a significant effect on the environment, these amendments are not subject to the California Environmental Quality Act, Public Resources Code §21000 et seq. (CEQA) [see Cal. Code Regs., tit. 14, §15061(b)(3)]. The State Water Board, therefore, is not required to prepare an environmental document for the amendments. Likewise, because the proposed amendments have no regulatory effect and are administrative in nature, the State Water Board is not required to consider economic impacts or obtain an independent scientific peer review of the changes.

II. AMENDING THE OCEAN PLAN

Basis for Proposed Amendments

In 2005, the State Water Board adopted Resolution No. 2005-0080 directing staff to review a series of high priority issues identified in the 2005-2008 Triennial Review Workplan (TRW) (SWRCB 2005). The high priority issue identified in the TRW and addressed in this staff report is TRW Issue 19, Expression of Metals. TRW Issue 25, classified as medium priority, described non-substantive administrative changes and is also addressed in this staff report. These issues include updating the list of exceptions in Appendix III of the Ocean Plan to reflect the current list, inclusion of maps delineating coastal water bodies and boundaries, as well as other pertinent features in the near coastal ocean, and removing the outdated section on compliance schedules and correcting typographical errors in the toxicity definitions. Other issues identified in the TRW are being planned to be addressed in later staff reports as resources permit.

On June 26, 2007, a public scoping meeting was held (pursuant to Public Resources Code section 21083.9) to seek input on the proposed scope and content of the environmental information relative to each of the issues identified in the TRW. The scoping document included a brief description of each issue, summary of existing regulatory framework, and preliminary list of potential alternatives that could be further developed to resolve the issue. The written comments that were received dealt predominately with agreement or disagreement with the proposals rather than discussing the environmental information. Staff evaluated all comments and concerns and initiated work to develop and refine the issues and associated alternatives. All written comments relating to the issues addressed in this staff report were considered by staff in the preparation of this document.

Supporting Documents

The documents described above, consisting of the 2005-2008 TRW (including State Water Board Resolution No. 2005-0080), the June 2007 Scoping Document for the Amendment of the Ocean Plan, and written comments received by the close of the “scoping” comment period, are posted at:

http://www.waterboards.ca.gov/water_issues/programs/ocean/index.shtml

Staff Report Issues

The list of issues described in this staff report as proposed amendments to the Ocean Plan is presented on page 1.

Legal Requirements

General Overview of Legal Requirements for Ocean Plan Amendments

In 1972, Congress enacted the federal Clean Water Act (CWA) to restore and maintain the chemical, physical, and biological integrity of the Nation's waters⁴. Under §303(c) of the CWA, the states are primarily responsible for the adoption and periodic review of water quality standards for all waters within their boundaries. The State Water Board is designated as the state water pollution control agency for all purposes under the CWA.

The California Water Code (CWC), Article 4 (commencing with section 13160) of Chapter 3 of Division 7, requires the State Water Board to formulate and adopt a water quality control plan for the ocean waters of the state, known as the Ocean Plan. The Ocean Plan sets forth standards to protect all ocean waters of California and prescribes programs to implement these standards. The standards include the designated beneficial uses of the ocean waters, narrative and numeric objectives to protect these uses, and the State's Antidegradation Policy. The program of implementation includes waste discharge limitations, monitoring, and enforcement. The Ocean Plan provides the basis for regulation of wastes discharged into the State's coastal waters, and applies to both point and nonpoint source discharges. The State Water Board and the six coastal Regional Water Quality Control Boards (Regional Water Boards) implement and interpret the Ocean Plan.

The State Water Board adopted the Ocean Plan in 1972 and has since periodically revised it. Both federal law [CWA section 303(c)(1)] and State law [CWC section 13170.2(b)] require that ocean water quality standards be reviewed at least once every three years to ensure the continued adequacy of the standards. Triennial reviews are comprehensive and include a public hearing to identify issues to be addressed. The State Water Board evaluates all available information at the hearing to determine whether revisions to the plans are needed and the nature of any necessary revisions. The Ocean Plan was most recently updated in 2005.

Amendments to the Ocean Plan follow state and federal requirements for public participation and state requirements for environmental and economic analysis. The State Water Board must consider the factors specified in CWC section 13241, including economics, when adopting or revising water quality objectives. In addition, the State Water Board must include a program of implementation for new or revised water quality objectives (CWC §§13170, 13242). The regulatory provisions of all Ocean Plan amendments must be approved by the state Office of Administrative Law (OAL). Amendments that include the adoption or modification of a new or existing water quality standard or general policy affecting the application or implementation of standards must also be approved by the United States Environmental Protection Agency (U.S. EPA) in order to be effective. The 2005 Ocean Plan became effective February 14, 2006 when it was approved by U.S. EPA.

⁴ See 33 United States Code (U.S.C.) §1251 *et seq.*

In addition, the State Water Board must comply with CEQA when adopting amendments to the Ocean Plan. The State Water Board's planning program is a certified regulatory program under CEQA (See Public Resources Code §21080.5). In lieu of an environmental impact report or negative declaration, the State Water Board's regulations require preparation of a written report, called a Substitute Environmental Document, which includes:

- A brief description of the proposed activity.
- Reasonable alternatives to the proposed activity.
- Mitigation measures to minimize any significant adverse environmental impacts of the proposed activity.
- The environmental impacts that could occur as a result of the proposed actions are identified in an "Environmental Checklist".

Amendments to the Ocean Plan are also subject to scientific peer review requirements in accordance with Health and Safety Code section 57004, which requires external scientific peer review of the scientific basis for any rule proposed by any board, office, or department within the California Environmental Protection Agency (Cal/EPA). Scientific peer review strengthens the foundation of regulatory actions, establishes credibility with stakeholders, and ensures that public resources are managed effectively.

Proposed Amendments

For the reasons explained below, some of the legal requirements described above do not apply to the proposed amendments described in this report.

CWC Sections 13241 and 13242

Staff is not proposing to adopt or review water quality objectives; therefore, CWC section 13241 does not apply to the proposed amendment.

CEQA

As explained above, there is no possibility that the proposed amendments may have a significant effect on the environment. Therefore, the proposed amendments are not subject to CEQA. Consequently, the State Water Board is not required to prepare a Substitute Environmental Document or Environmental Checklist.

Scientific Peer Review

The amendments described in this staff report are administrative in nature and are not scientifically-based. As a result, these proposed amendments are not subject to the requirement for external scientific peer review.

U.S. EPA

U.S. EPA approval is not required for these amendments because the amendments do not adopt or modify water quality standards or implementation policies for the standards.

Overview of the 2005 Ocean Plan

Chapter One of the Ocean Plan identifies the designated beneficial uses of marine waters. These uses include preservation and enhancement of designated Areas of Special Biological Significance (ASBS), rare and endangered species, marine habitat, fish migration, fish spawning, shellfish harvesting, recreation, commercial and sport fishing, mariculture, industrial water supply, and navigation.

Chapter Two establishes a set of narrative and numerical water quality objectives designed to protect beneficial uses. These objectives are based on bacterial, physical, chemical, and biological characteristics, as well as radioactivity. The water quality objectives in Table B apply to all receiving waters under the jurisdiction of the Ocean Plan and are established for protection of aquatic life and for protection of human health from both carcinogens and noncarcinogens.

Chapter Three is divided into nine sections: (A) General Provisions; (B) Table A Effluent Limitations; (C) Implementation Provisions for Table B; (D) Implementation Provisions for Bacterial Characteristics; (E) Implementation Provisions for ASBS; (F) Revision of Waste Discharge Requirements; (G) Monitoring Program; (H) Discharge Prohibitions; and (I) State Board Exceptions to Plan Requirements. Section 3(A) provides the guidance needed to design systems for discharges into marine waters by listing the considerations a discharger must address before a new discharge is permitted. Section 3(A) also identifies how ASBS are designated and the application of U.S. EPA's Combined Sewer Overflow Policy.

Section 3(B) contains effluent limitations for the protection of marine waters. The effluent limitations listed in Table A apply to all publicly owned treatment works (POTWs) and to industries that do not have effluent limitation guidelines established by the U.S. EPA.

When a discharge permit is written, the water quality objectives for the receiving water are converted into effluent limitations that apply to discharges into State ocean waters. These effluent limitations are established on a discharge-specific basis depending on the initial dilution calculated for each outfall and the Table B objectives. Section 3(C) describes how Table B is to be implemented, including: calculation of effluent limitations; determination of mixing zones for acute toxicity objectives; toxicity testing requirements; selection of, deviations from, and use of minimum levels; sample reporting protocols; compliance determination; pollutant minimization program; and toxicity reduction requirements.

Section 3(D) provides implementation provisions for bacterial assessment and remedial action requirements. The requirements provide a basis for determining the occurrence and extent of any impairment of beneficial use due to bacterial contamination, and provide the basis for remedial actions necessary to minimize or eliminate any impairment of a beneficial use.

Section 3(E) includes provisions concerning ASBS. It clearly states that waste shall not be discharged to ASBS and that such discharges shall be located a sufficient distance from ASBS to assure maintenance of natural water quality conditions in these areas. It also provides that Regional Water Boards may approve waste discharge requirements or recommend certification for limited-term (*i.e.*, weeks or months) activities in ASBS.

Sections 3(F) through 3(I) contain general provisions and sections on discharge prohibitions (*e.g.*, municipal or industrial sludges, bypassing, discharges into ASBS, and others). The provisions mandate that the Regional Water Boards require dischargers to monitor their discharges. Section 3(I) describes provisions for allowing exceptions to the Ocean Plan under special circumstances, provided that beneficial uses are protected and that the public interest is served.

III. ISSUES AND PROPOSED AMENDMENTS

This section describes each of the issues and proposed amendments. Each issue includes a background section, alternatives and analysis, a staff recommendation, and the proposed amendment to the Ocean Plan. After the formal comment period has ended, staff will amend the discussion of each issue to include a summary of comments received during the formal comment period.

Issue 1: Total Recoverable Metals

Background

The Ocean Plan does not explicitly specify whether metal concentrations in Table B, C, and D apply as total recoverable metals or as the dissolved metal fraction. State Water Board staff is regularly asked questions about whether the metal objectives are expressed as dissolved or total recoverable. Staff consistently responds with answer that the objectives are expressed as total recoverable metals and explains the historical background. The proposed amendment would add language to clarify that all metal objectives in Tables B, C, and D of the Ocean Plan are expressed as total recoverable concentrations.

Metal objectives have been in the Ocean Plan since its inception in 1972. The last time the metal objectives were amended was in the 1988 Ocean Plan. Many of the objectives for metals in the 1988 Ocean Plan are based on a peer-reviewed paper from 1979 by Klapow and Lewis. While not explicitly stated in that paper, at that time analysis for metals was generally performed as total recoverable metals. Historical State Water Board staff report documents in support of the 1988 Ocean Plan amendment describe the toxicological basis for the metal objectives but do not specifically describe the way the objectives should be expressed (*i.e.*, as the total recoverable metal or as the dissolved metal fraction).

The State Water Board has consistently interpreted and applied the current metal objectives, since their adoption in 1988, as total recoverable concentrations. This interpretation is consistent with the metals criteria in the 1993 National Toxics Rule (57 Fed. Reg. 60848 - 60923), which were also expressed as total recoverable metal concentrations, as recommended in the then current CWA Section 304(a) criteria guidance documents. In compliance with Section 304(a)(1) of the CWA, in 1986, in the Quality Criteria for Water (also known as the "Gold Book"), the U.S. EPA recommended using the total recoverable method when applying the national water quality criteria (EPA 440/5-86-001). The Gold Book was contemporaneous with the 1988 amendment to the Ocean Plan. In addition, compliance with effluent limitations implementing Ocean Plan metal objectives is determined using 40 CFR 136 analytical methods, also resulting in the detection and quantification of total recoverable metals.

This proposed amendment would not result in any change to the means by which compliance is determined. Rather, this amendment would clarify the historic and current means by which the metal objectives are interpreted (*i.e.*, as total recoverable concentrations).

Alternatives and Analysis

Alternative 1: No Action. Do not amend the Ocean Plan. If the Ocean Plan is not amended, whether the metal concentrations stated in Tables B, C, and D are expressed as total or dissolved will remain unclear to those without historical experience in complying with the Ocean Plan.

Alternative 2: Amend the Ocean Plan, with the statement “unless otherwise specified, all metal concentrations are expressed as total recoverable concentration.” Amending the Ocean Plan to clearly state that all metal concentrations are expressed as total recoverable concentrations would accurately reflect the historic record. This approach would eliminate any confusion regarding how the metal concentrations are expressed.

Analysis:

This amendment is intended to clarify for regulators, the regulated community, and interested parties that metal objectives are expressed as total recoverable concentrations. The proposed amendment will not change analytical methods or the means by which metal data is evaluated with respect to the objectives.

Staff Recommendation:

Clarify that total metals are required in Tables B, C and D. The Ocean Plan should be amended with the statement “unless otherwise specified, all metal concentrations are expressed as total recoverable concentrations.”

Proposed Changes to the 2005 Ocean Plan

Amend Section II.D. Chemical Characteristics

- 1. The dissolved oxygen concentration shall not at any time be depressed more than 10 percent from that which occurs naturally, as the result of the discharge of oxygen demanding waste* materials.*
- 2. The pH shall not be changed at any time more than 0.2 units from that which occurs naturally.*
- 3. The dissolved sulfide concentration of waters in and near sediments shall not be significantly* increased above that present under natural conditions.*
- 4. The concentration of substances set forth in Chapter II, Table B, in marine sediments shall not be increased to levels which would degrade* indigenous biota.*
- 5. The concentration of organic materials in marine sediments shall not be increased to levels that would degrade* marine life.*

6. Nutrient materials shall not cause objectionable aquatic growths or degrade* indigenous biota.
7. Numerical Water Quality Objectives
 - a. Table B water quality objectives apply to all discharges within the jurisdiction of this Plan. Unless otherwise specified, all metal concentrations are expressed as total recoverable concentrations.
 - b. Table B Water Quality Objectives

Amend Section III.C.4. Calculation of Effluent Limitations

- a. Effluent limitations for water quality objectives listed in Table B, with the exception of acute* toxicity and radioactivity, shall be determined through the use of the following equation:

Equation 1: $C_e = C_o + D_m (C_o - C_s)$

where:

C_e = the effluent concentration limit, ug/l

C_o = the concentration (water quality objective) to be met at the completion of initial* dilution, ug/l

C_s = background seawater concentration (see Table C below, with all metals expressed as total recoverable concentrations), ug/l

D_m = minimum probable initial* dilution expressed as parts seawater per part wastewater.

Amend Section III.F.4. Provided further that:

- a. Any alternative water quality objectives shall be below the conservative estimate of chronic* toxicity, as given in Table D (with all metal concentrations expressed as total recoverable concentrations), and such alternative will provide for adequate protection of the marine environment;
- b. A receiving water quality toxicity objective of 1 TUc is not exceeded; and
- c. The State Board grants an exception (Chapter III. I.) to the Table B limits as established in the Regional Board findings and alternative limits.

Issue 2: Remove Section III (F) (1) on Compliance Schedules and Add Section III (G) (1) on Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits

Background

The State Water Board first adopted the Ocean Plan in 1972, prior to adoption of the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act). The 1972 plan provided that “[t]he Regional Board shall revise the waste discharge requirements for existing discharges as necessary to achieve compliance with this Plan and shall also establish a time schedule for such compliance.” This language has been inadvertently retained throughout time and remains in the current Ocean Plan. The provision should be removed because it is unnecessary, no longer appropriate, and is confusing.

The language is unnecessary because the Regional Water Boards are required under existing law to issue waste discharge requirements to all dischargers to ocean waters that implement the Ocean Plan. Further, under existing law, the Regional Water Boards are authorized to establish time schedules under Time Schedule Orders and other orders to ensure compliance with the Ocean Plan.

The language is confusing because, although the language pre-dated the establishment of the National Pollutant Discharge Elimination System (NPDES) permit program, some people have argued that the language authorizes compliance schedules in permits. In addition to pre-dating the permit program, the language does not comply with the legal requirements applicable to state authorizations for compliance schedules in permits [See *In re Star-Kist Caribe, Inc.* (NPDES Appeal No. 88-5 (May 26, 1992))]. Because the language has been misconstrued, the proposed amendment would delete it.

The State Water Board’s Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits took effect on December 17, 2008. (Cal. Code Regs., tit. 23, §2918.) The policy applies to any water quality objectives in a water quality standard that are first adopted, revised, or newly interpreted after the effective date of the policy. The policy, therefore, applies to the adoption of new or revised water quality objectives and to new interpretations of objectives in the Ocean Plan after December 17, 2008. Staff proposes to add a new section G. to chapter III of the Ocean Plan to clarify this issue.

Alternatives and Analysis

Alternative 1: No action. Do not amend the Ocean Plan by deleting Section III (F) (1), allowing a continuation of confusion regarding whether the language authorizes compliance schedules in permits for those who do not have the historical experience in complying with the plan. Do not amend the Ocean Plan by adding Section III (G) (1), allowing a continuation of confusion for the regulated community about how the compliance schedule policy applies to the Ocean Plan.

Alternative 2: Amend the Ocean Plan by deleting Section III (F) (1) and add a new Section III (G) (1) stating that compliance schedules in NPDES permits are authorized in accordance with the provisions of the State Water Board's Compliance Schedule Policy.

Analysis:

If antiquated Section III (F) (1), regarding a time schedule for compliance, is not deleted, there will be a continuation of confusion for those who do not have the historical experience in complying with the Ocean Plan.

The existing State Water Board's Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits already applies to the adoption of new or revised water quality objectives and to new interpretations of objectives in the Ocean Plan after December 17, 2008. Adding a new Section III (G) (1) makes it clear that compliance schedules in NPDES permits are authorized in accordance with the Compliance Schedule Policy.

Staff Recommendation:

Delete Section III (F) (1) and add a new Section III (G) (1) stating that compliance schedules in NPDES permits are authorized in accordance with the provisions of the State Water Board's Compliance Schedule Policy.

Proposed Changes to the 2005 Ocean Plan

Amend Section III.F. Revision of Waste Discharge Requirements and add Section III.G. Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits*

- ~~1. The Regional Board shall revise the waste* discharge requirements for existing* discharges as necessary to achieve compliance with this Plan and shall also establish a time schedule for such compliance.~~
- ~~2. 1. The Regional Boards may establish more restrictive water quality objectives and effluent limitations than those set forth in this Plan as necessary for the protection of beneficial uses of ocean* waters.~~
- ~~3. 2. Regional Boards may impose alternative less restrictive provisions than those contained within Table B of the Plan, provided an applicant can demonstrate that:
 - a. Reasonable control technologies (including source control, material substitution, treatment and dispersion) will not provide for complete compliance; or
 - b. Any less stringent provisions would encourage water* reclamation;~~

4. 3. *Provided further that:*

- a. *Any alternative water quality objectives shall be below the conservative estimate of chronic* toxicity, as given in Table D (with all metal concentrations expressed as total recoverable concentrations), and such alternative will provide for adequate protection of the marine environment;*
- b. *A receiving water quality toxicity objective of 1 TUc is not exceeded; and*
- c. *The State Board grants an exception (Chapter III. I.) to the Table B limits as established in the Regional Board findings and alternative limits.*

G. Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits

1. Compliance schedules in NPDES permits are authorized in accordance with the provisions of the State Water Board's Policy for Compliance Schedules in [NPDES] Permits (2008).

Issue 3: Toxicity References

Background

This issue addresses typographical errors relating to references in the explanations relating to toxicity testing. Staff is proposing to correct these errors.

The toxicity definitions need to be corrected and revised. In the 2005 Ocean Plan's Acute Toxicity definition in Appendix I, there is a reference to Appendix III, Chapter II, which is circular and confusing. Chapter II is in the main body of the Ocean Plan and is not part of Appendix III. This should be corrected by deleting the reference to "Chapter II". In addition, the Chronic Toxicity definition references critical life stage tests in Appendix II instead of Appendix III, Table III-1. The Chronic Toxicity definition's reference to critical life stage tests should be changed to Appendix III, Table III-1.

This proposed amendment is intended to correct errors in references, and would not result in any change to the interpretation or implementation of the Ocean Plan. As with previous issues, the proposed change is intended to add clarity.

Alternatives and Analysis

Alternative 1: No action. Do not amend Appendix I with regard to the definition of toxicity, allowing a continuation of confusion regarding compliance.

Alternative 2: Amend the Ocean Plan by correcting the definitions for acute and chronic toxicity in Appendix I.

Analysis:

If the Ocean Plan, Appendix I, is not amended with regard to the definitions of acute and chronic toxicity, there will be a continuation of confusion regarding compliance. Amending these definitions will simply remove confusion by correcting typographic errors.

Staff Recommendation:

Amend the Ocean Plan. Delete the reference to Chapter II in the Acute Toxicity definition in Appendix I. Delete the reference to Appendix II in the Chronic Toxicity definition in Appendix I. Include the reference to Appendix III, Table III-1 in the Chronic Toxicity definition in Appendix I.

Proposed Changes to the 2005 Ocean Plan

Amend the Appendix I definition for ACUTE TOXICITY

a. *Acute Toxicity (TUa)*

Expressed in Toxic Units Acute (TUa)

$$TUa = \frac{100}{96\text{-hr LC } 50\%}$$

b. *Lethal Concentration 50% (LC 50)*

LC 50 (percent waste giving 50% survival of test organisms) shall be determined by static or continuous flow bioassay techniques using standard marine test species as specified in Appendix III, ~~Chapter II~~. If specific identifiable substances in wastewater can be demonstrated by the discharger as being rapidly rendered harmless upon discharge to the marine environment, but not as a result of dilution, the LC 50 may be determined after the test samples are adjusted to remove the influence of those substances.

When it is not possible to measure the 96-hour LC 50 due to greater than 50 percent survival of the test species in 100 percent waste, the toxicity concentration shall be calculated by the expression:

$$TUa = \frac{\log(100 - S)}{1.7}$$

where:

S = percentage survival in 100% waste. If S > 99, TUa shall be reported as zero.

Amend the Appendix I definition for CHRONIC TOXICITY: This parameter shall be used to measure the acceptability of waters for supporting a healthy marine biota until improved methods are developed to evaluate biological response.

a. *Chronic Toxicity (TUc)*

Expressed as Toxic Units Chronic (TUc)

$$TUc = \frac{100}{NOEL}$$

b. *No Observed Effect Level (NOEL)*

The NOEL is expressed as the maximum percent effluent or receiving water that causes no observable effect on a test organism, as determined by the result of a critical life stage toxicity test listed in ~~Appendix II~~ Appendix III, Table III-1.

Issue 4: Addition of Coastal Water Body Maps

Background

In order to provide additional clarity to the Ocean Plan, staff is proposing in this issue to include maps of California coastal waters that differentiate ocean waters from enclosed bays and estuaries and provide additional information such as the location of ASBS. The maps would be presented in a new appendix (Appendix VIII) to the Ocean Plan. Because the Ocean Plan is not applicable to enclosed bays and estuaries, the addition of these maps would provide greater clarity to regulators, the regulated community, and interested parties attempting to discern which plans and policies are applicable to a given water body. Appendix I of the 2005 Ocean Plan includes the following definitions:

ENCLOSED BAYS are indentations along the coast which enclose an area of oceanic water within distinct headlands or harbor works. Enclosed bays include all bays where the narrowest distance between headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. This definition includes but is not limited to: Humboldt Bay, Bodega Harbor, Tomales Bay, Drakes Estero, San Francisco Bay, Morro Bay, Los Angeles Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay Plan.

ESTUARIES AND COASTAL LAGOONS are waters at the mouths of streams that serve as mixing zones for fresh and ocean waters during a major portion of the year. Mouths of streams that are temporarily separated from the ocean by sandbars shall be considered as estuaries. Estuarine waters will generally be considered to extend from a bay or the open ocean to the upstream limit of tidal action but may be considered to extend seaward if significant mixing of fresh and salt water occurs in the open coastal waters. The waters described by this definition include but are not limited to: the Sacramento-San Joaquin Delta as defined by Section 12220 of the California Water Code, Suisun Bay, Carquinez Strait downstream to Carquinez Bridge, and appropriate areas of the Smith, Klamath, Mad, Eel, Noyo, and Russian River.

OCEAN WATERS are the territorial marine waters of the State, as defined by California law, to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. If a discharge outside the territorial waters of the State could affect the quality of the waters of the State, the discharge may be regulated to assure no violation of the Ocean Plan will occur in ocean waters.

The addition of maps would help to avoid confusion particularly for those bays that do not meet the definition of an enclosed bay. Examples include Santa Monica Bay and Monterey Bay that lie in ocean waters. Although major enclosed bays and estuaries are identified by name, without specific dimensions, differentiating ocean waters from waters of an enclosed bay would be difficult for an end user. This amendment would only identify ocean waters (three nautical mile limit), enclosed bays and estuaries based upon the existing definitions, the locations of ASBS, and certain other existing features such as NPDES wastewater outfalls, ocean “no discharge zones”, and marine protected

areas in the near coastal ocean. The maps would not identify inland surface waters. The addition of these maps is intended to compliment and support the existing definitions within the Ocean Plan.

Alternatives and Analysis

Alternative 1: No action, resulting in no change to the Ocean Plan. Maps would not be added.

Alternative 2: Amend the Ocean Plan through the addition of maps identifying ocean waters, enclosed bays and estuaries, ASBS, and certain other existing features in the near coastal ocean. The maps would support and compliment the existing definitions of the water bodies and are not intended to result in any change to the interpretation of the boundaries, regulation of the waters, or applicability.

Analysis:

Maintaining the existing Ocean Plan without maps would not impact experienced users, however new users and stakeholders may have difficulty differentiating ocean waters from enclosed bays. The addition of maps would negate this problem and provide additional clarity.

Staff Recommendation:

Include maps in Appendix VIII identifying ocean waters, enclosed bays and estuaries, ASBS, and certain other existing features in the near coastal ocean.

Proposed Changes to the 2005 Ocean Plan

Amend the Ocean Plan to add maps of the coastline and important water quality related features in a new Appendix VIII. The proposed maps are presented on the following pages.

**APPENDIX VIII
MAPS OF THE OCEAN, COAST, AND ISLANDS**

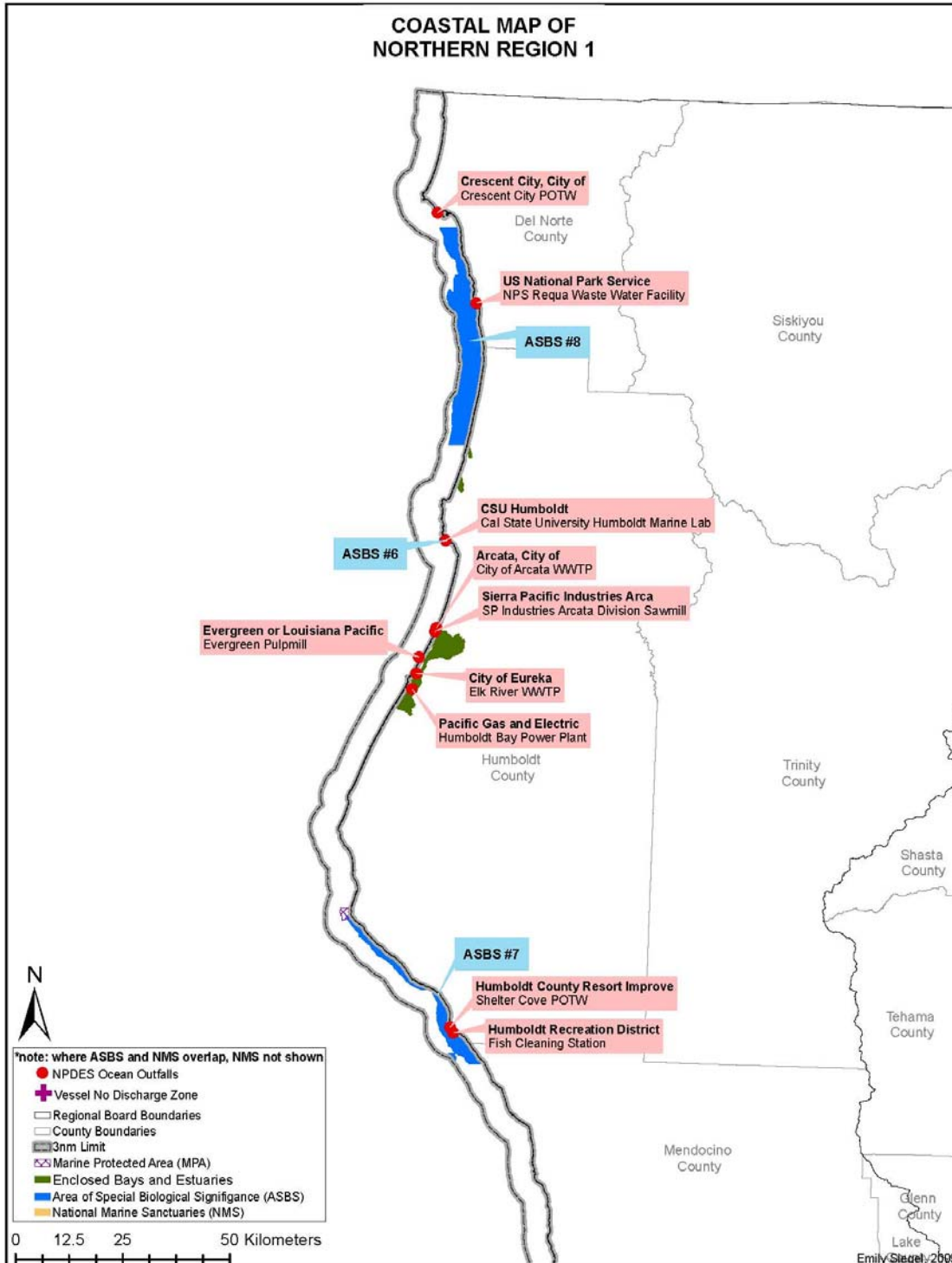


Figure VIII-1. ASBS Boundaries, MPA Boundaries, Wastewater Outfall Points, Marine Sanctuary Boundaries, and Enclosed Bays in northern Region 1.

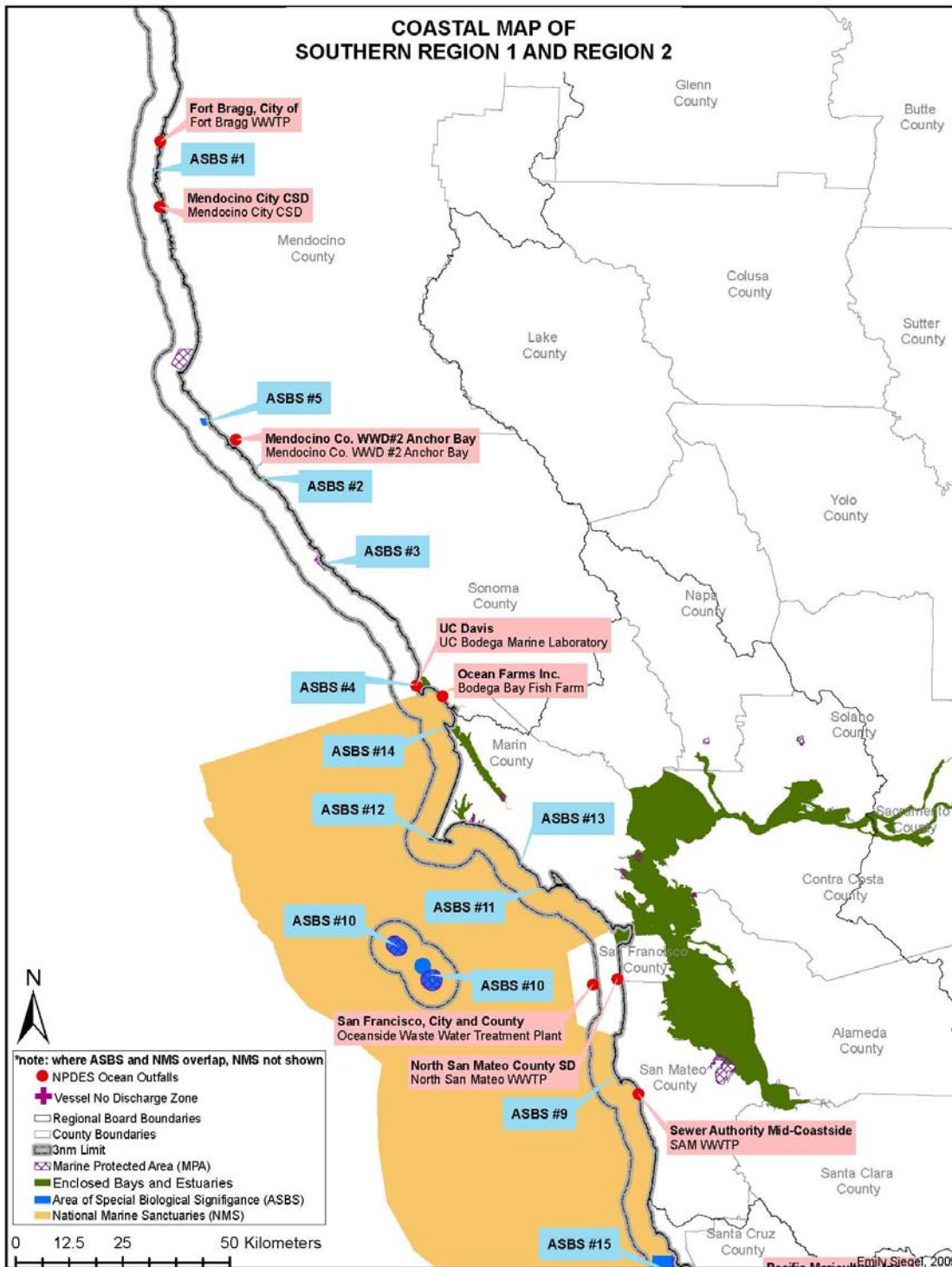


Figure VIII-2. ASBS Boundaries, MPA Boundaries, Wastewater Outfall Points, Marine Sanctuary Boundaries, and Enclosed Bays in southern Region 1 and Region 2.

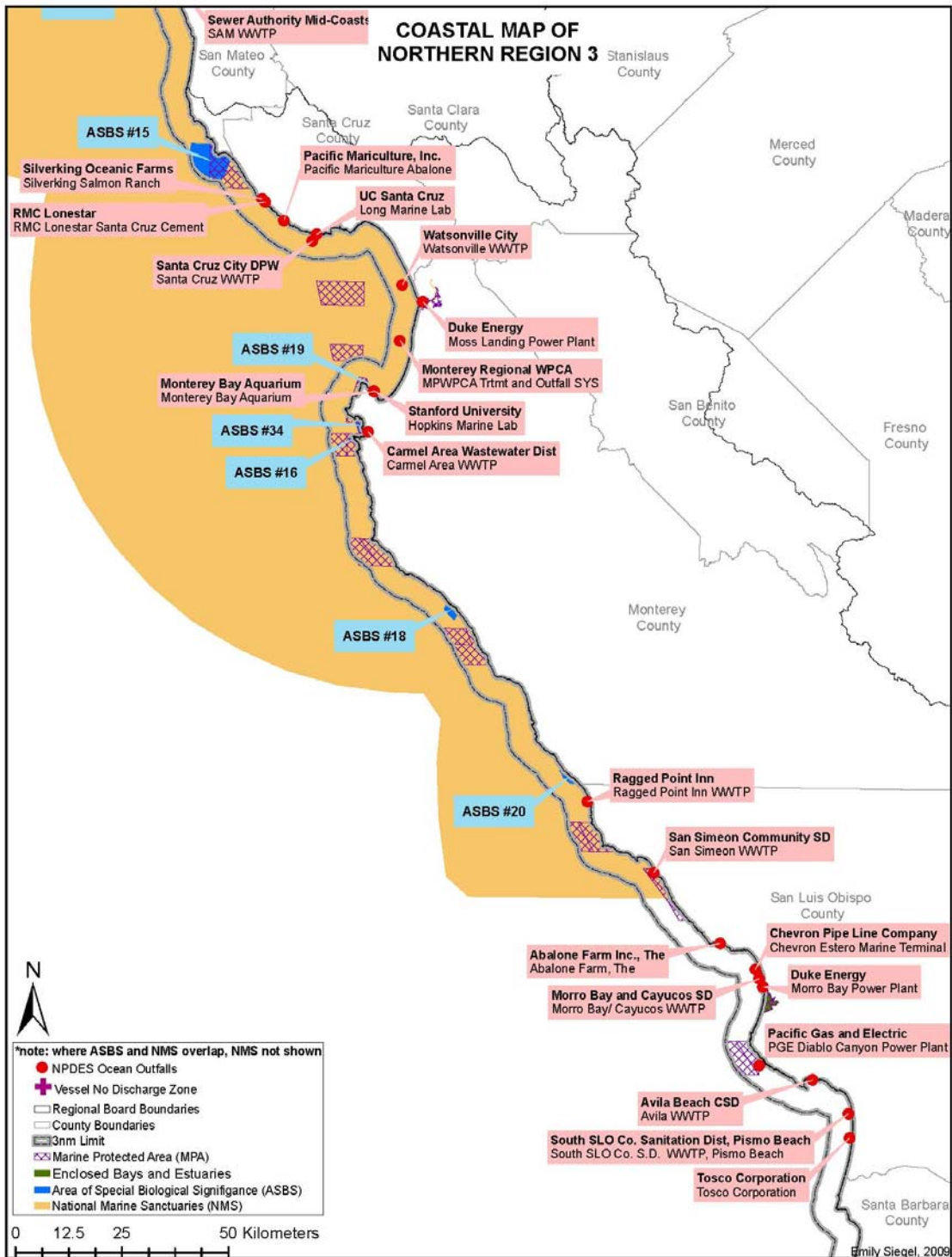


Figure VIII-3. ASBS Boundaries, MPA Boundaries, Wastewater Outfall Points, Marine Sanctuary Boundaries, and Enclosed Bays in northern Region 3.

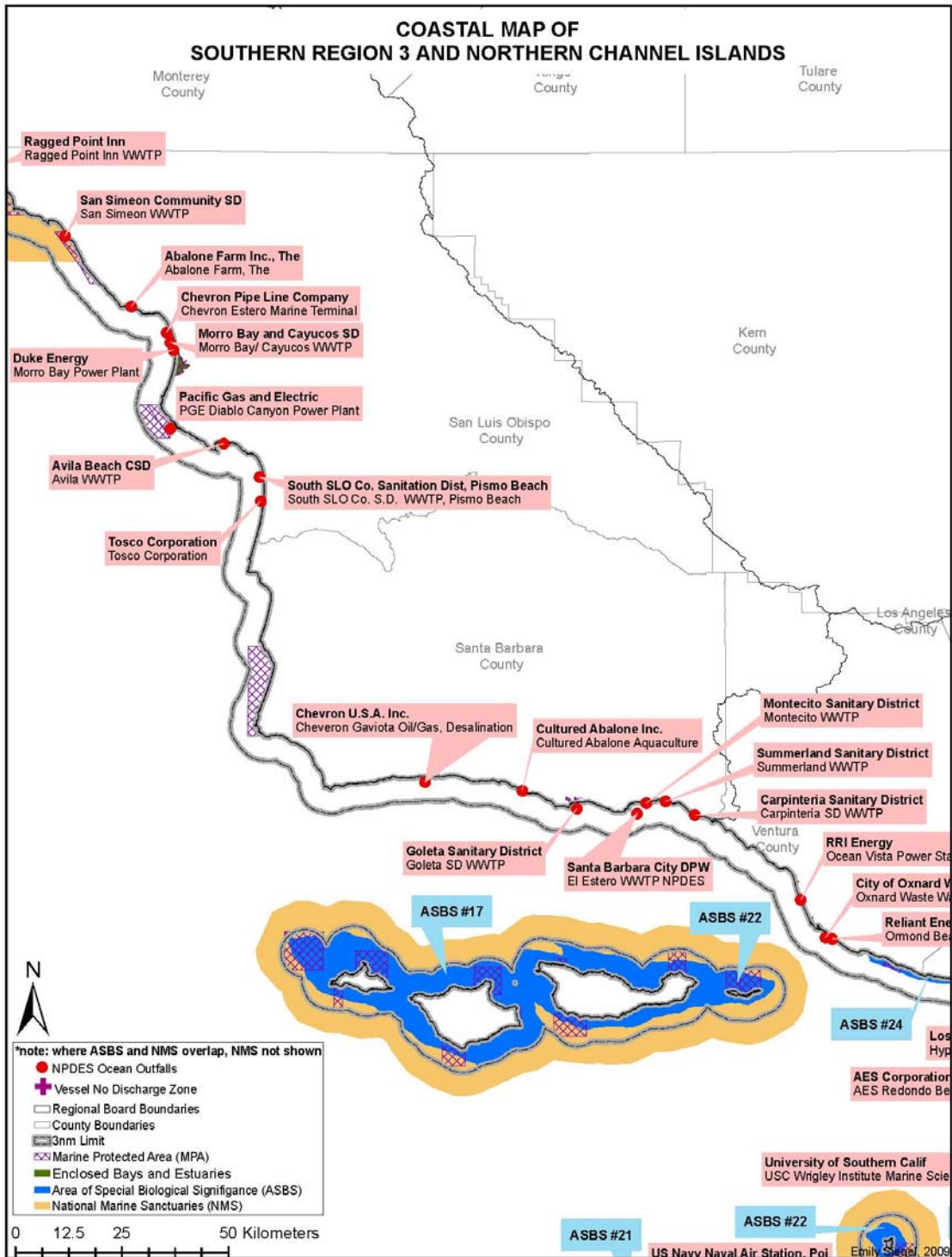


Figure VIII-4. ASBS Boundaries, MPA Boundaries, Wastewater Outfall Points, Marine Sanctuary Boundaries, and Enclosed Bays in southern Region 3 and northern Channel Islands.

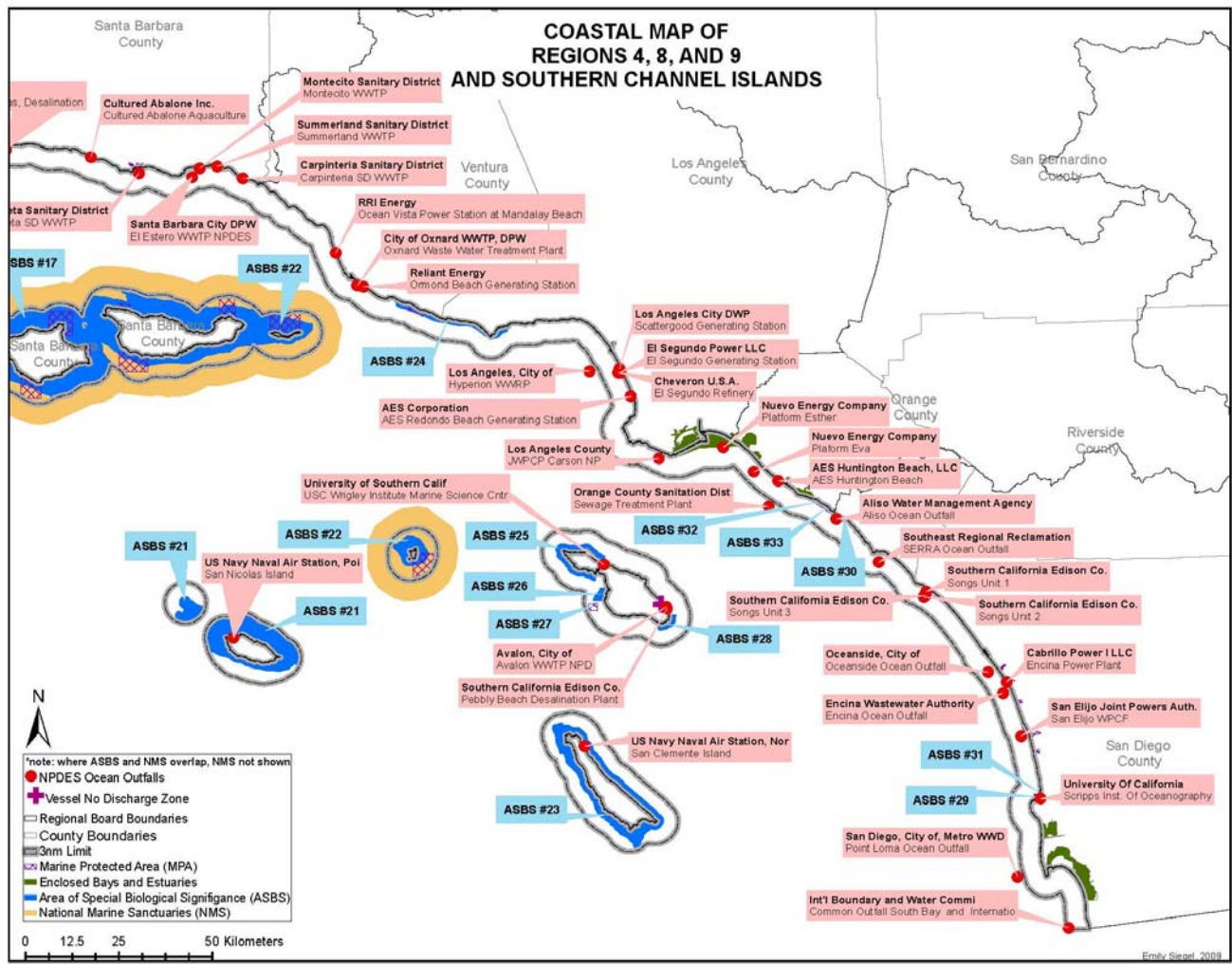


Figure VIII-5. ASBS Boundaries, MPA Boundaries, Wastewater Outfall Points, Marine Sanctuary Boundaries, and Enclosed Bays in southern Channel Islands and Regions 4, 8 and 9.

Issue 5: Update the List of Exceptions in Appendix VII

Background

Appendix VII of the Ocean Plan is intended to identify all exceptions approved by the State Water Board. However, the current Ocean Plan Appendix VII has not been updated since 2005 and as a result is not current. Staff is proposing to update the table by adding all exceptions to the Ocean Plan approved by the State Water Board that staff is aware of to date. That list of exceptions should include the following:

- City and County of San Francisco's combined storm and wastewater collection system for untreated wet weather discharges approved in 1979 (Resolution No. 79-16), which was inadvertently not included in the 2005 Ocean Plan.
- An exception for the following power plants associated chlorine discharges approved in 1988 (Resolution No. 88-80), which was inadvertently not included in the 2005 Ocean Plan:
 - Haynes Power Plant
 - Harbor Power Plant
 - Scattergood Power Plant
 - Alamitos Power Plant
 - El Segundo Power Plant
 - Long Beach Power Plant
 - Mandalay Power Plant
 - Ormond Beach Power Plant
 - Redondo Power Plant
- University of Southern California Wrigley Institute's Area of Special Biological Significance discharge approved in 2006 (Resolution No. 2006-0013)
- University of California, Davis Bodega Marine **Laboratory's** Area of Special Biological Significance discharge approved in 2007 (Resolution No. 2007-0058)

Staff was unaware of the 1979 San Francisco and 1988 power plant exceptions when Appendix VII was originally added to the Ocean Plan in 2005. Under state and federal law, exceptions are generally subject to triennial review. Staff intends to review these old exceptions and to report back to the Board as to our recommendations during the next Triennial Review, currently scheduled for 2009.

Alternatives and Analysis

Alternative 1: No action, resulting in no change to the Ocean Plan.

Alternative 2: Amend the Ocean Plan by simply updating Appendix VII to include all exceptions currently in place.

Analysis:

By not amending Appendix VII of the Ocean Plan, users of the Ocean Plan (the regulated community, environmental organizations, the public, and State and Regional Water Board staff) would not be aware of the existence of all of the exceptions to the Ocean Plan, which are now in effect. Conversely, listing all of these exceptions in Appendix VII would resolve this shortcoming.

Staff Recommendation:

Alternative (2): Amend the Ocean Plan to include all exceptions.

Proposed Changes to the 2005 Ocean Plan

APPENDIX VII

EXCEPTIONS TO THE CALIFORNIA OCEAN PLAN

**TABLE VII-1
EXCEPTIONS TO THE OCEAN PLAN**

(GRANTED BY THE STATE WATER RESOURCES CONTROL BOARD)

<i>Year</i>	<i>Resolution</i>	<i>Applicable Provision</i>	<i>Discharger</i>
1977	77-11	Discharge Prohibition, ASBS #23	US Navy San Clemente Island
1979	79-16	<u>Discharge Prohibition for untreated wet weather discharges from combined storm and wastewater collection system.</u>	<u>The City and County of San Francisco</u>
1983	83-78	Discharge Prohibition, ASBS #7	Humboldt County Resort Improvement District No. 1
1984	84-78	Discharge Prohibition, ASBS #34	Carmel Sanitary District
1988	88-80	<u>Total Chlorine Residual Limitation</u>	<u>Haynes Power Plant</u> <u>Harbor Power Plant</u> <u>Scattergood Power Plant</u> <u>Alamitos Power Plant</u> <u>El Segundo Power Plant</u> <u>Long Beach Power Plant</u> <u>Mandalay Power Plant</u> <u>Ormond Beach Power Plant</u> <u>Redondo Power Plant</u>
1990	90-105	Discharge Prohibition, ASBS #21	US Navy San Nicolas Island
2004	2004-0052	Discharge Prohibition, ASBS #31	UC Scripps Institution of Oceanography
2006	2006-0013	Discharge Prohibition, ASBS #25	<u>USC Wrigley Marine Science Center</u>
2007	2007-0058	Discharge Prohibition, ASBS #4	<u>UC Davis Bodega Marine Laboratory</u>

IV. REFERENCES

Klapow LA, and Lewis RH. 1979. Analysis of toxicity data for California marine water quality standards. J Water Pollut Control Fed. 51:2054-2070.

State Water Board. 1979. City and County of San Francisco's combined storm and wastewater collection system for untreated wet weather discharges approved in 1979 (Resolution No. 79-16)

State Water Board. 1988. An exception for power plant associated chlorine discharges approved in 1988 (Resolution No. 88-80)

State Water Board. 2006. University of Southern California Wrigley Institute's Area of Special Biological Significance discharge approved in 2006 (Resolution No. 2006-0013)

State Water Board. 2007. University of California, Davis Bodega Marine **Laboratory's** Area of Special Biological Significance discharge approved in 2007 (Resolution No. 2007-0058)

State Water Board. 2005. 2005-2008 Triennial Review Workplan (including State Water Board Resolution No. 2005-0080),
http://www.swrcb.ca.gov/water_issues/programs/ocean/index.shtml

State Water Board. 2006. June 2006 Scoping Document for the Amendment of the Ocean Plan, http://www.swrcb.ca.gov/water_issues/programs/ocean/index.shtml

Written comments received by the close of the "scoping" comment period, are posted at: http://www.swrcb.ca.gov/water_issues/programs/ocean/index.shtml

US Environmental Protection Agency. 1986. Quality Criteria for Water -1986 (Gold Book). EPA 440/5-86-001

US Environmental Protection Agency 1993 National Toxics Rule (57 Fed. Register 60848 - 60923)

US Environmental Protection Agency. Guidelines Establishing Test Procedures for the Analysis of Pollutants. 40 CFR 136

APPENDIX A - California Ocean Plan with draft amendments shown

http://www.waterboards.ca.gov/water_issues/programs/ocean/docs/oplans/amendments2009/oceanplan2009_appendix_a.pdf

APPENDIX B - Public Comments and State Water Board Staff Responses

Issue 1: Total Recoverable Metals

Comment: “Page 9, Issue 1: Total Recoverable Metals. Alternatives and Analysis – I support a third Alternative: ‘Amend the Ocean Plan, with the statement ‘all metal concentrations are expressed as total recoverable concentration.’ Amending the Ocean Plan to clearly state that all metal concentrations are expressed as total recoverable concentrations would accurately reflect the historic record. This approach will eliminate any confusion regarding how the metal concentrations are expressed.” (Teresa Jordan - Received May 6, 2009)

“Page 10, Issue 1: Total Recoverable Metals. Amend Section II.D. Chemical Characteristics – Change Section 7.a to read ‘Table B water quality objectives apply to all discharges within the jurisdiction of this Plan. All metal concentrations are expressed as total recoverable concentrations.’” (Teresa Jordan - Received May 6, 2009)

“Page 6, Section D. 7, change the second sentence to read ‘All metal concentrations are expressed as total recoverable concentrations.’” (Teresa Jordan - May 7, 2009)

Staff Response

The “unless otherwise specified” language is included to put everyone clearly on notice that all metal objectives are expressed as total recoverable unless specific language is included to the contrary. The Board may do the latter on a case-by-case basis in the future.

Comment: “[T]he Draft Staff Report ... explains that the State Water Board has consistently interpreted and applied the current metals objectives in the Ocean Plan as total recoverable concentrations... It further explains that the State Water Board's interpretation is consistent with EPA policy as expressed in the National Toxics Rule and in the 1986 Quality Criteria for Water. However, the Draft Staff Report fails to recognize EPA's most recently promulgated position on this issue.

In the California Toxics Rule (CTR), EPA promulgated toxics criteria for California, including criteria for metals. As part of that rule, EPA specifically states, ‘[i]t is now the Agency's policy that the use of dissolved metal to set and measure compliance with aquatic life water quality standards is the recommended approach...’ Thus, we recommend that the State Water Board not adopt the proposed clarification and instead revise the Ocean Plan appropriately to include dissolved metals criteria.” (Cynthia Royer - Received May 29, 2009)

Staff Response

We are simply clarifying what already exists in the Ocean Plan in regard to total recoverable metals. It is correct that the California Toxics Rule metals criteria are expressed as dissolved metals concentrations. We are not considering a change to the current Ocean Plan at this point, but this issue may be addressed in the future.

In particular, interested persons can request that the current metals objectives be revised from total recoverable to dissolved concentrations in a future triennial review.

Comment: “Since the publication of the 1979 paper by Klapow and Lewis much research has been conducted both in the State and across the Nation. As a result, a greater understanding has been gained on metals criteria as they apply to ocean waters. We recommend that the criteria be refined to reflect scientific findings currently available.

“Further, several scientific studies show that dissolved concentrations, and not total recoverable metal concentrations, are accountable for much of the bioavailable fraction of metals. Thus the currently existing National and State Toxics Rules are established based on dissolved metals. To be consistent with the National and State water quality objectives for metals, we recommend that all metals objectives in the Ocean Plan be expressed as dissolved metals concentrations, and not as total recoverable concentrations.” (Gary Hildebrand, Assistant Deputy Director, Watershed Management Division, Los Angeles County Department of Public Works – Received August 27, 2009)

Staff Response

Similar to our above response to the North San Mateo County Sanitation District, staff is simply clarifying that existing objectives in the Ocean Plan are for total recoverable metals. It is generally true that dissolved metals are accountable for much of the bioavailable fraction, and that the California Toxics Rule metals criteria are expressed as dissolved metals concentrations. While we are not considering a change to the current Ocean Plan to convert our metals objectives to dissolved fractions, this issue may be discussed in the future, for example at our next Triennial Review.

Comment: “Page 8, Issue 1: Total Recoverable Metals. It was mind boggling that State Water Board ‘has consistently interpreted the current metal objectives, since their adoption in 1988, as total recoverable concentrations’. If this historical information is not on the Board’s Website, it must be posted ASAP. This historical information should be included in the permit applications. There is no excuse for so much Board staff time to be thus occupied, and for the ‘toxicological basis for the metal objectives’ to ‘not’ be ‘specifically’ described as the ‘total recoverable metal or as the dissolved metal fraction’ since 1988 (Background, second paragraph)!” (Teresa Jordan - Received May 6, 2009)

Staff Response

Staff agrees that staff time should not be occupied by this issue, which is why we have proposed this clarification. All of the documents are referenced in Section IV of the Draft Staff Report and are available to the public. We will consider posting the documents as time and resources permit in the future. At this time it is not feasible due to limited staff resources.

Issue 2: Compliance Schedules

Comment: “[T]he Draft Staff Report does not clarify that in-permit compliance schedules may be adopted for some permit provisions in accordance with the State Water Board's *Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits* (Compliance Schedule Policy). (See State Water Board Resolution No. 2008-0025.) In light of the application of the State Water Board's Compliance Schedule Policy, we recommend that the Ocean Plan be amended to clarify that in-permit compliance schedules may be appropriate -subject to the requirements contained in the Compliance Schedule Policy. Further, we recommend that the Draft Staff Report also be revised to clarify the application of the State's Compliance Schedule Policy to dischargers subject to the Ocean Plan.” (Cynthia Royer - Received May 29, 2009)

Staff Response

We agree. The State Water Board's Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits took effect on December 17, 2008. (Cal. Code Regs., tit. 23, §2918.) The policy applies to any water quality objectives in a water quality standard that are first adopted, revised, or newly interpreted after the effective date of the policy. The policy, therefore, applies to the adoption of new or revised water quality objectives and to new interpretations of objectives in the Ocean Plan after December 17, 2008. Staff proposes to add a new section G. 1. to Chapter III of the Ocean Plan to clarify this issue.

The new section G. reads as follows:

- G. Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits
 - 1. Compliance schedules in NPDES permits are authorized in accordance with the provisions of the State Water Board's Policy for Compliance Schedules in [NPDES] Permits (2008).

Comment: “Page 11, Issue 2: Remove Section III(F)(1) on Compliance Schedules. Change Alternative 2 to read ‘Amend the Ocean Plan by deleting Section III(F)(1) in order to comply with the legal requirements applicable to state authorizations for compliance schedules in permits [see *In re Star-Kist Caribe, Inc.* (NPDES Appeal No. 88-5 (May 26, 1992)].’” (Teresa Jordan - Received May 6, 2009)

Staff Response

Comment has been noted. Staff disagrees that the wording should be added to the Staff Report because the rationale for the amendment need not be included in the Ocean Plan itself. Rather, the rationale belongs in the staff report.

Comment: “Page 11, Issue 2: Remove Section III(F)(1) on Compliance Schedules. Analysis – There is no excuse whatsoever for there to have been ‘a continuation of confusion’ because permittees did ‘not have the historical experience in complying with the Ocean Plan.’” (Teresa Jordan - Received May 6, 2009)

Staff Response

Comment noted.

Comment: “Page 12, Issue 2: Remove Section III(F)(1) on Compliance Schedules. Amend Section III.F. Revision of Waste* Discharge Requirements – 1. Change to read ‘The Regional Boards shall establish more restrictive water quality objectives and effluent limitations than those set forth in this Plan as necessary for the protection of beneficial uses of ocean* waters.’” (Teresa Jordan - Received May 6, 2009)

“Page 21, F.1, change ‘may’ to ‘shall’.” (Teresa Jordan - May 7, 2009)

Staff Response

Staff disagrees. Under California State Law, the Regional Boards do not have to be more restrictive, although they may be.

Issue 3: Toxicity References

Comment: “Page 13, Issue 3: Toxicity References. Alternatives and Analysis – I support a third Alternative: ‘Amend Appendix I of the Ocean Plan by correcting the typographical errors relating to references in the explanations relating to toxicity testing.’ I am not in support of the revisions.” (Teresa Jordan - Received May 6, 2009)

Staff Response

Comment noted. Staff disagrees.

Comment: “Pages 24 and 25, change the location of ‘b. No Observed Effect Level (NOEL)’ from the bottom of page 24 to the top of page 25.” (Teresa Jordan - May 7, 2009)

Staff Response

Comment noted. The formatting error has been fixed.

Comment: “Page 24, ‘Chronic Toxicity’, Section ‘a.’ and ‘Expressed as...’ are not indented correctly.” (Teresa Jordan - May 7, 2009)

Staff Response

Comment noted. The formatting has been fixed.

Comment: “Page 25, top of page, the sentence ‘The NOEL is expressed as the maximum percent effluent...[.]’ is not indented correctly.” (Teresa Jordan - May 7, 2009)

Staff Response

Comment noted. The formatting has been fixed.

Comment: “Pages 23 and 24, change the location of ‘APPENDIX I’ from the bottom of page 23 to the top of page 24.” (Teresa Jordan - May 7, 2009)

Staff Response

Comment noted. The formatting error has been fixed.

Issue 4: Addition of Coastal Water Body Maps

Comment: “It would be helpful to label each ASBS by name and number, as well as counties, cities or other landmarks to assist in interpreting the images.” (Dan Berman - Received April 17, 2009)

Staff Response

Comment noted. We are including maps in the Ocean Plan for the first time, and it will be an ongoing project. We have since edited the maps to label the NPDES discharges and ASBS (by number). There will be opportunities to improve and update the maps in the future.

Comment: “The recently (2007) designated MPAs in the Pt Conception to Pigeon Point region are not included. See <http://www.dfg.ca.gov/mlpaipdfs/ccmpas04I907.pdf>. Using a similar map presentation to these CDFG maps would be a great improvement over the existing maps.” (Dan Berman - Received April 17, 2009)

Staff Response

Thank you for your comment. We have since included DFG’s shapefile of MPAs in the Ocean Plan maps. The recently designated MPAs in the Point Conception to Pigeon Point region are now included in the maps.

Comment: “The Maps appear to show a number of NPDES discharges within designated ASBS that are not included in the list of exceptions and not otherwise discussed in the document: 2 discharges on page 46 (One in Del Norte County, one at Trinidad), two on page 47 at Shelter Cove.” (Dan Berman - Received April 17, 2009)

Staff Response

The discharge at Redwoods National Park ASBS is a waste discharge requirement (WDR). It was included with the NPDES ocean outfalls because it discharges on land in close proximity to the ASBS. The discharge at Trinidad Head ASBS is from Humboldt State University’s (HSU) Marine Lab and is currently not regulated under an NPDES Permit. However, HSU has applied for an exception for its discharge. One of the discharge points at Shelter Cove is from the Shelter Cove POTW, which has an exception. The other discharge is from the Humboldt Recreation District’s fish cleaning station. There is no exception or permit for this discharge. However,

we are in the process of having the discharge eliminated, and are working with the responsible party to do so.

Comment: “Carmel Bay does not appear as an ASBS on the relevant map (p 51).”
(Dan Berman - Received April 17, 2009)

Staff Response

The Carmel Bay ASBS is shown on the map, but is difficult to see. Staff intends to correct this issue by providing identification of ASBS by their respective number.

Comment: “Page 16, Issue 4: Addition of Coastal Water Body Maps. I am in support of including maps ‘identifying ocean waters, enclosed bays and estuaries, ASBS, and certain other existing features in the near coastal ocean.’ Unfortunately, there are two Alternative 1s. The second Alternative reads ‘1’. Please correct this typographical error.” (Teresa Jordan - Received May 6, 2009)

Staff Response

Comment noted. This typographical error has been fixed.

Comment: “Pages 17 through 27, Issue 4: Addition of Coastal Water Body Maps. To each map (Figures VIII-1 to VIII-11) add the disclaimer statement from page 16’s second Alternative 1- ‘The map is not intended to result in any change to the interpretation of the boundaries, regulation of the waters, or applicability.’” (Teresa Jordan - Received May 6, 2009)

“Pages 46 to 56, to each map (Figures VIII-1 to VIII-11) add the disclaimer statement from Page 16 of the Staff Report’s second Alternative 1- ‘The map is not intended to result in any change to the interpretation of the boundaries, regulations of the waters, or applicability.’ Add the names of the applicable ‘ocean waters, enclosed bays and estuaries, ASBS, and certain other existing features...’ to each map also.” (Teresa Jordan - May 7, 2009)

Staff Response

Comment noted. The statement in the staff report is correct, but does not need to be repeated on each map.

Comment: “Pages 17 through 27, Issue 4: Addition of Coastal Water Body Maps. To each map (Figures VIII-1 to VIII-11) add the names of the applicable ‘ocean waters, enclosed bays and estuaries, ASBS , and certain other existing features in the near coastal ocean’. Without this information the reader has to cross reference the textual information, or make no sense of the maps if not familiar with the particular areas.” (Teresa Jordan - Received May 6, 2009)

Staff Response

Comment noted. We will be including maps in the Ocean Plan for the first time, and it will be an ongoing project. We have since added labels to the NPDES discharges

and ASBS (by number). There will be opportunities to improve and update the maps further in the future.

Comment: “While we concur that the maps are important, we recommend adding (1) County and city boundaries, where applicable, and (2) the specific names of the appropriate Marine Protected Areas, Areas of Special Biological Significances (ASBS), and Waste Water Outfall Points. (Gary Hildebrand, Assistant Deputy Director, Watershed Management Division, Los Angeles County Department of Public Works – Received August 27, 2009)

Staff Response

Comment noted. We are now including maps in the Ocean Plan for the first time, and it will be an ongoing project. We have since added labels to the NPDES discharges and ASBS (by number). We have also now included county boundaries. There will be opportunities to improve and update the maps further in the future.

Issue 5: Update the List of Exceptions in Appendix VII

Comment: “We strongly support adding the proposed amendment 5.b. to Appendix VII, the exception established for the City and County of San Francisco combined sewer discharges in Resolution WQ 79-16. We suggest the following edit in order to accurately reflect the requirements of the U.S. EPA Combined Sewer Overflow Control Policy: Item:5. Update the list of exceptions in Appendix VII in order to include: b. the 1979 conditional exception for ~~untreated~~ wet weather discharges from the City and County of San Francisco combined storm and wastewater collection system, which was inadvertently omitted from the 2005 Ocean Plan.” (Arleen Navarret for Tommy Moala, Assistant Manager, Wastewater Enterprise, San Francisco Public Utilities Commission - Received August 27, 2009)

Staff Response

Staff appreciates the support for the amendment, but it should be noted that the specific inclusion of the reference to WQ 79-16 is not “amendment 5.b.” but rather simply a component to the amendment recommended in Issue 5. Regarding striking the term “untreated” from proposed changes to Table VII-1, it should be noted that the term “untreated” was derived from page 2 of Resolution WQ 79-16, which states: “Untreated wet weather diversions require an exception to the Ocean Plan.” However, WQ 79-16 states in its conclusions (page 20, V. Conclusions) that “the proposed wet weather discharges by the City and County of San Francisco from eight diversion structures in the Richmond Sunset Sewerage Zone are excepted from the requirements of the Ocean Plan.” Therefore, since the term “untreated” is not present in the conclusions of the exception, staff is removing the term “untreated” from the description of the exception.

Comment: “Page 28, Issue 5: Update the list of exceptions in Appendix VII. This issue proved to be very tricky taking the years 1979 and 1988 into consideration. First and foremost, there is no excuse for the exceptions pre-dating 2005 not to have been

included no matter how inadvertent the oversights may have been. Second, by supporting the exceptions of those power plants pre-dating 2005, the interested party supports the Regional Water Boards and State Water Boards approvals. Thus, any opposition is made null and void. The intention by 'staff' 'to review these old exceptions and to report back to the board as to' 'recommendations during the next Triennial Review, currently scheduled for 2009' just does not cut it. To me this says that the State and Regional water Boards are in violation of State and Federal chlorine discharges' laws." (Teresa Jordan - Received May 6, 2009)

Staff Response

Staff is only attempting to correct an unintentional omission in Appendix VII. It is a statement of fact that these exceptions exist. There is no opposition or support to be made.

Comment: "Page 28, Issue 5: Update the List of Exceptions in Appendix VII. By supporting the exceptions of the USC's Wrigley Institute's Area of Special Biological Significance discharge approved in 2006', and the UC Davis Bodega Marine Lab's Area of Special Biological Significance discharge approved in 2007', the interested party supports the Regional Water Boards and State Water Boards approvals. Thus, any opposition is made null and void." (Teresa Jordan - Received May 6, 2009)

Staff Response

Staff is only attempting to update the list of exceptions in the Ocean Plan. The exception already exists. There is no opposition or support to be made.

Comment: "Page 29, Issue 5: Update the List of Exceptions in Appendix VII. Analysis – In order for 'users of the Ocean Plan (the regulated community, environmental organizations, the public, and State and Regional Water Board staff)' to 'be aware of the existence of all the exceptions to the Ocean Plan' have the information posted on the State and Regional Water Boards' Websites!!!" (Teresa Jordan - Received May 6, 2009)

Staff Response

More recent exceptions are posted at

http://waterboards.ca.gov/water_issues/programs/oceans/asbs.shtml

Board Resolutions, which include exceptions are posted at

http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/index.shtml

All exceptions are available to the public, and may be obtained by calling or e-mailing staff.

Comment: "Change Lab to Laboratory in the following three places:

"Issue 5: Update the List of Exceptions in Appendix VII

Page 28: • University of California. Davis Bodega Marine Lab's Area of Special Biological Significance discharge approved in 2007 (Resolution No. 2007-0058)

“Appendix VII Table. VII-1 Exceptions to the Ocean Plan
Page 30, 2007/2007-0058/Discharge Prohibition, ASBS #4/ UC Davis Bodega Marine
Lab

“IV. References

Page 31: State Water Board. 2007. University of California, Davis Bodega Marine Lab's
Area of Special Biological Significance discharge approved in 2007 (Resolution No.
2007-0058).” (Susan L. Williams, Ph.D. - Received May 29, 2009)

Staff Response

Comment noted. Changes to the University of California, Davis Bodega Marine
Laboratory have been made.

Comment: “We have applied for an exception for discharges entering ASBS No. 24.
Although updating the list of exceptions for discharges to ASBS in the Ocean Plan
would appear to have no impact, the requirements of the Special Protections remain
unknown at this time. Thus, we recommend adding a condition or footnote to the
updated list so that each applicant will have the discretion to alter its position on fulfilling
the Special Protections requirements should the applicant’s exception be approved.”
(Gary Hildebrand, Assistant Deputy Director, Watershed Management Division, Los
Angeles County Department of Public Works – Received August 27, 2009)

Staff Response

Appendix VII is provides a list of adopted exceptions to the California Ocean Plan.
The general exception for specific applicants that have discharges of storm water
and nonpoint sources into ASBS, which is the exception you are being considered
for, has not been adopted. Should this exception be adopted it would be added to
the list in Appendix VII in a subsequent amendment to the Ocean Plan.

Miscellaneous Comments

Comment: “Issues 1 and 2 are the reason that State and Regional Water Boards
enforcement is sorely lacking. Yet the State office of the Attorney General is the one
being blamed for this problem from what I read in the Water Boards 2008
Accomplishments Report. No wonder there is quite a difference between Water Boards’
Mission statements.” (Teresa Jordan - Received May 6, 2009)

Staff Response

Staff disagrees. These two issues are not the cause of any perceived lack of
enforcement.

Comment: A variety of concerns were raised regarding the environmental effects of
public usage at Pismo Beach Dunes. Included were concerns about water/beach
pollution, air pollution, impacts to marine mammals and endangered species, etc.
Specifically with regard to water quality the concerns included: “Gasoline spillage...”;
“Dumping of liquid from holding tanks of motor home.”; “Vehicles traveling through

flowing Arroyo Grande creek...”; and “Suspected Portapotty dumping into the sand...” (Ann Steele – Received July 15, 2009)

Staff Response

While Ms. Steele raises concerns about pollution at Pismo Dunes, these issues are not related to the non-substantive amendments being considered for the Ocean Plan. State Water Board staff has transmitted Ms. Steele’s letter to the Central Coast Regional Water Board staff for its consideration and possible action with regard to these concerns.

Comment: “I suggest just one change as the result of our Department’s recent split: All references made to the Department of Health Services (DHS) should be changed to the Department of Public Health (DPH).” (Steve Boggs, Environmental Laboratory, Department of Public Health - Received July 13, 2009)

Staff Response

This is a valid recommendation reflective of the current (new name) for the Department of Public Health. References to the Department of Health Services (DHS) occur several times throughout the Ocean Plan. While this correction was not listed as an issue in the draft staff report, the California Ocean Plan Triennial Review and Workplan 2005-2008 does state in its Issue 25: (Non-substantive Administrative Changes), upon which this amendment package is largely based, that “certain non-substantive features need to be improved.” Staff considers this a non-substantive administrative change and therefore has corrected all references to the Department of Health Services (DHS) in the proposed amended Ocean Plan.

Comment: “Page 1, first sentence after ‘INTRODUCTION’, it is stated ‘This staff report describes proposed non-substantive amendments to the Water Quality Control Plan for Ocean Waters of California (Ocean Plan)...’ I disagree that these proposed amendments to the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) are ‘non-substantive’.” (Teresa Jordan - Received May 6, 2009)

Staff Response

Comment has been noted. Staff disagrees.

Comment: “Pages 1 through 52, locate the page number at the bottom of the paper; not the top.” (Teresa Jordan - May 7, 2009)

Staff Response

Comment noted.

Comment: “Pages 53 to 56, locate the page number on the opposite side.” (Teresa Jordan - May 7, 2009)

Staff Response

Comment noted.

Comment: “At a time when the Los Angeles Regional Water Quality Control Board has not responded to any of my 5 letters submitted for the Ventura Countywide MS4 NPDES Draft Tentative Permit (May 7, 2009 hearing), in which I reference typographical errors, it is very interesting to read State Water Board staff’s concern over Ocean Plan typographical errors leading to ‘confusion regarding compliance’. In light of LARWQCB’s Executive Officer Egoscue’s corrections of Calleguas Creek Watershed Nitrogen TMDL typographical errors, this lack of response is mind boggling.” (Teresa Jordan - Received May 6, 2009)

Staff Response

Comment noted. This is not the subject of this Ocean Plan Amendment.

“Will the Monitoring Procedures amendments be discussed at the June 16 hearing?” (John Crow - Received May 28, 2009)

Staff Response

We are not going to make recommendations on model monitoring amendments at the June 16, 2009 board hearing. Staff plans to move forward with model monitoring amendments in the future.