

Appendix C – Response to Comments

**Proposed Amendment to the
2009 California Ocean Plan**

**Implementation of State Water Board Resolutions 2010-0057
and 2011-0013 State Water Quality Protection Areas and
Marine Protected Areas**

State Water Resources Control Board

Public Hearing – May 1, 2012

Comment Letters Received by noon on April 18, 2012

Letter No.	Association	Representative
1	California Association of Sanitation Agencies Tri-TAC Southern California Alliance of POTWs	Roberta Larson Terri Mitchell John Pastore
2	California Council for Environmental and Economic Balance	Robert Lucas Gerald Secundy
3	California Farm Bureau Federation	Kari Fisher
4	California Stormwater Quality Association	Richard Boon
5	The Center for Biological Diversity	Miyoko Sakashita
6	City of Dana Point	Brad Fowler
7	City of Huntington Beach	Travis Hopkins
8	City of Laguna Beach	Jane Egly
9	City of Laguna Niguel	Tim Casey
10	City of Orange	Frank Sun
11	City of Rancho Palos Verdes	Tom Odom
12	City of San Diego	Kris McFadden
13	Construction Industry Coalition on Water Quality	Mark Grey
14	County of Los Angeles Department of Public Works on behalf of Los Angeles County Flood Control District	Gary Hilderbrand
15	County Sanitation Districts of Los Angeles County	Grace Chan
16	General Public	Christine Heinrichs
17	General Public	Jim Webb
18	Greenspace	Richard Hawley

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Letter No.	Association	Representative
19	Heal the Bay California Coastkeeper Alliance Surfrider Foundation NRDC Santa Barbara Channelkeeper Orange County Coastkeeper	Sarah Sikich Sara Aminzadeh Joe Geever Karen Garrison Kira Redmond Garry Brown
20	Irvine Company	Dean Kirk
21	Monterey Regional Storm Water Permit Participants Group	Sarah Hardgrave
22	Municipal Water District of Orange County	Richard Bell
23	Orange County Public Works	Mary Anne Skorpanich
24	Orange County Sanitation District	James Colston

Letter 1: From Roberta Larson of California Association of Sanitation Agencies, Terri Mitchell of Tri-TAC, and John Pastore Southern California Alliance of POTWs

Comment 1.1

The definition of State Water Quality Protection Areas - General Protection (SWQPA-GP) in Appendix I should be consistent with the language in Provision E.3 of the Draft Amendment.

“State Water Quality Protection Areas – General Protection (SWQPAGP) designated by the State Water Board to ~~maintain~~ protect marine species or biological communities from an undesirable alteration in natural water quality ~~in order to protect or conserve marine life and habit~~ within State Marine Parks and State Marine Conservation Areas.”

Response 1.1

Staff agrees with the proposed modified definition. Since the intention of the proposed amendment is to provide improved coordination and protection of California’s marine managed areas (MMAs) with the Marine Managed Areas Improvement Act (MMAIA), the definition of SWQPA-GP was modified in the proposed amendment to be more consistent with the Public Resources Code definition.

Comment 1.2

They ask to remove the phrase “or other unique and sensitive areas” from Provision E.1.(a)(2) prior to adoption.

Response 1.2

Staff agrees with the proposed revision to Provision E.1.(a)(2). The SWQPA-GPs are intended to only be designated within State Marine Parks and State Marine Conservation Areas. The proposed amendment was revised in Provision E.1.(a)(2) with the removal of the phrase “or other unique and sensitive areas”.

Comment 1.3

Appendix IV should be renamed and amended to clarify the criteria for SWQPA-GP designation.

Response 1.3

The title for Appendix IV was revised in the Staff Report and draft Substitute Environmental Document (SED) to provide more clarity for the procedures for the nomination and designation of SWQPA-GP.

Comment 1.4

Language in the Resolution 2010-0057, specifically Resolved 3.b and 3.c, expressing the intent of the State Water Boards with regard to regulation of municipal wastewater facilities has been omitted from the draft amendment.

Resolved 3.b: “Where new SWQPAs are established in the vicinity of existing municipal wastewater outfalls, there shall be no new or modified limiting conditions or prohibitions for the SWQPAs relative to those wastewater outfall.”

Resolved 3.c: “Regulatory requirements for discharges from existing treated municipal wastewater outfalls shall be derived from the California Ocean Plan.”

Response 1.4

Staff agrees this language should be included in the amendment in order to align with Resolution 2010 – 0057. The proposed amendment was revised to include language similar to Resolved 3.b and 3.c in Provision E.5.(a)(3-4).

Comment 1.5

Clarification of Provision E.2 by removing the phrase “beyond those in existing law, regulations, and water quality control plans” should be removed to avoid regulatory confusion.

Response 1.5

Staff agrees with the removal the phrase “beyond those in existing law, regulations, and water quality control plans” to reduce ambiguity and regulatory confusion. In addition to removing the phrase, staff decided to modify Provision E.2 based on suggested language in Comment Letter 19.

The modified provision reads:

“The designation of State Marine Parks and State Marine Conservation Areas may not serve as the sole basis for new or modified limitations, substantive conditions, or prohibitions existing municipal point source wastewater discharge outfalls. This provision does not apply to State Marine Reserves.”

The modification of the provision provides for increased clarity and protection of the beneficial uses in State Marine Parks and State Marine Conservation Areas. MPAs are designated to protect or conserve marine life and habitat. The water quality has a critical role in the survival and health of the marine life in these areas. While MPA designation should not be the sole trigger for additional regulation, if there is degradation of marine life, habitat, and/or water quality then additional regulation may be necessary to protect the beneficial uses regardless of whether SWQPA-GP are designated or not.

Comment 1.6

Dry weather diversions of non-storm water (dry weather) flows to municipal sewer system must not be mandated.

Response 1.6

The proposed amendment does not mandate a universal dry weather diversion of non-storm water flows to municipal sewer systems. Non-storm water discharges would be prohibited as required by the applicable permit. Thus, if the applicable permit does not require dry weather flow diversion, then diversion of dry weather flows will not be mandated by this proposed amendment.

Comment 1.7

The potential environmental impacts associated with designation of new State Water Quality Protection Areas – Areas of Special Biological Significance (SWQPA-ASBS) in the vicinity of State Marine Reserves (SMR) should be analyzed and disclosed in the California Environmental Quality Act (CEQA) checklist.

Response 1.7

This proposed amendment does not designate new SWQPA-ASBS. This proposed amendment provides the framework for SWQPA to protect MPAs through the proposal of a new subset named SWQPA-GP. As described in Appendix IV of the proposed amendment, the designation of SWQPAs-ASBS and SWQPAs-GPS must follow the public process and comply with CEQA documentation requirements. Thus in the public process for designation, potential environmental impacts associated with designation will be analyzed and disclosed pursuant to CEQA.

Comment 1.8

The draft amendment contains several typographical errors in Section 5.6.2 Table 2 that should be corrected prior to finalizing the document.

Response 1.8

Staff appreciates the typographical comments regarding Table 2 in Section 5.6.2. These typographical errors were corrected in the Staff Report and draft SED to reflect the South Coast MPAs effective on January 1, 2012.

Letter 2: From Robert Lucas and Gerald Secundy of California Council for Environmental and Economic Balance

Comment 2.1

Dewater discharges pursuant to Waste Discharge Requirement (WDRs) or National Pollution Discharge Elimination System (NPDES) permits from linear system facilities that provide gas, electric and communication services should be explicitly authorized by the proposed amendments to the California Ocean Plan (Ocean Plan).

Response 2.1

Staff agrees. The proposed amendment was revised to authorize dewater discharges with the inclusion of the following provision:

“An NPDES permitting authority may authorize non-storm water discharges to an MS4 with a direct discharge to an SWQPA-GP only to the extent the NPDES permitting authority finds that the discharge does not cause an undesirable alteration in natural water quality in an SWQPA-GP.”

[Editorial Note: In the Draft Final SED, the provision language was removed from Provision E.5.(a) and moved to Provision E.5.(c)(2). See Comment/Response 3.1 in August 31, 2012 Response to Comments].

Comment 2.2

The Marine Managed Areas Improvement Act does not classify State Marine Reserves, State Marine Parks and State Marine Conservation Areas as SWQPAs and they should therefore not be managed to achieve “natural water quality”.

Response 2.2

The Marine Managed Areas Improvement Act was intended to more effectively organize, designate, and manage California’s assortment of different marine managed areas and provide consistency among the state agencies that administer, manage, and designate the areas. The Marine Managed Areas Improvement Act further defines SWQPA as areas “designated to protect marine species or biological communities from an undesirable alteration in natural water

quality". If designated MMAs require additional protection from potential impacts associated with degraded water quality, the State and Regional Water Boards under the authority of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act (Porter-Cologne) would be responsible for developing and adopting new SWQPAs and more stringent permits or discharge conditions, including prohibitions within these areas.

Comment 2.3

Implementation of additional requirements for SWQPAs should incorporate the approach described in State Water Resources Control Board's (SWRCB) Resolution 2010-0057 through incorporation of suggested language for the following two Provisions.

Provision E.5.(a)(3): "Where new SWQPA established in the vicinity of existing municipal wastewater outfalls, there shall be no new or modified limiting condition or prohibitions for the SWQPA relative to those wastewater outfalls."

Provision E.5.(a)(4): "Regulatory requirements for discharges from existing treated municipal wastewater outfalls shall be derived from the California Ocean Plan"

Response 2.3

Staff agrees. The proposed amendment was modified to include the suggested language for Provisions E.5.(a)(3) and E.5.(a)(4). This provides consistency established with Resolution 2010-0057. Please see Response 1.4.

[Editorial Note: Provision E.5.(a)(3) was present in draft final SED. Provision E.5.(a)(3) was modified in draft final SED – see Comment/Response 2.4 in August 31, 2012 Response to Comments].

Comment 2.4

The Ocean Plan Amendment should clarify that it establishes the process for nominating and approving new SWQPAs, but does not in itself approve any new SWQPAs.

Response 2.4

The proposed amendment does not designate new SWQPAs. This proposed amendment provides the framework for SWQPAs to protect MPAs through the proposal of a new subset named SWQPA-GP. As described in Appendix IV of the proposed amendment, each nomination for new designation of an SWQPA-ASBS and/or an SWQPAs-GPS must follow the public process and comply with CEQA documentation requirements. Because the process for designation is set forth extensively in Appendix IV, further clarification is unnecessary.

Comment 2.5

The language for ASBSs should specify that discharges from linear system facilities that provide gas, electric and communication services are not prohibited to Municipal Separate Storm Sewer System (MS4) or other man-made or natural conveyance systems that eventually discharges to ASBS.

Response 2.5

The recent adoption of a General Exception to the California Ocean Plan waste discharge prohibition for selected discharge into ASBS on March 20, 2012 occurred after the release of this Staff Report and draft SED on February 23, 2012. The discussion of the adopted General Exceptions was included in the draft Staff Report. The Special Protections adopted as part of

the General Exception for Selected Discharges into Areas of Special Biological Significance include provisions that address authorization of non-storm water discharges to an MS4 with a direct discharge to an ASBS.

Letter 3: From Kari Fisher of California Farm Bureau Federation

Comment 3.1

Section 5.7.4.3 in the Staff Report recommends an “approach that assesses all existing storm water and nonpoint sources discharges categorized and use this information to determine what controls and prohibitions are needed to maintain natural water quality”. The California Farm Bureau Federation is concerned that the first alternative, “prohibit all existing stormwater and nonpoint discharges”, is not appropriately described.

Response 3.1

In the proposed amendment, staff is not recommending an approach that would “prohibit all existing storm water and nonpoint discharges” in MPAs. This approach would be no different than the existing special protections provided by the designation of ASBS. The proposed amendment provides a framework for SWQPA-GP, which will instead provide an intermediate level of protection between the baseline provisions of the Ocean Plan and an ASBS. For SWQPA-GP, staff recommends the adoption of an approach that assesses all existing storm water and nonpoint source discharges categorized and use this information to determine what controls and prohibitions are needed to maintain natural water quality. The discharges that will be prohibited into an SWQPA-GP will only include the following: new point source wastewater outfalls, new seawater intakes, and increases in nonpoint sources or permitted storm drains. Existing point sources wastewater discharges and seawater intakes will be continued to be allowed into SWQPA-GPs. Existing permitted MS4 discharges and nonpoint source discharge will allowed into SWQPA-GPs but shall not cause undesirable alteration in natural water quality.

Letter 4: From Richard Boon of California Stormwater Quality Association

Comment 4.1

The Staff Report and associated environmental documentation do not provide examples of where the proposed amendment is needed to benefit MPAs.

Response 4.1

The purpose of the proposed amendment is to create a framework for SWQPA-GP that in the future could be co-located with designated MPAs, specifically State Marine Parks and State Marine Conservation Areas. SWQPA-GP will provide an intermediate level of water quality protection, between the baseline Ocean Plan and ASBS designation, to maintain natural water quality to protect the beneficial uses of the unique and valuable marine fauna and flora and associated communities for this and future generations. The proposed amendment is an extension of the Marine Managed Areas Improvement Act, which aims to promote greater coordination between the agencies managing the different MMAs. Thus the coupling of the protection of beneficial uses on the unique and valuable marine fauna and flora and the Marine Managed Areas Improvement Act provides an explanation for how the SWQPA-GP will benefit MPAs.

Since the proposed amendment does not propose specific new designations of SWQPAs, examples of specific areas where the designation might be needed to benefit MPAs or where

specific water quality problems must be addressed are neither necessary nor appropriate at this time. In addition, there will be no change in permitted storm water and wastewater discharges with the proposed amendment. Compliance and permit modification will only occur following a designation of SWQPA-GPs at a possible future time period.

Comment 4.2

The rationale for the approach of ignoring Publicly Owned Treatment Works (POTWs) discharges and restricting MS4 discharges is not described or justified.

Response 4.2

The SWQPA-GPs are intended to provide intermediate water quality protection between the baseline Ocean Plan and ASBS designation. These proposed amendments do not ignore POTWs discharges, as new outfalls cannot be established and POTWs must continue to comply with the Ocean Plan. The proposed amendment does provide conditions for SWQPA-GPs to not be co-located with existing outfalls and for existing outfalls to not be moved. The Ocean Plan, through the narrative and numeric objectives, already strictly controls wastewater discharges to meet effluent limits in order to protect the beneficial uses of the state's ocean waters. In contrast, the Ocean Plan currently is less strict for permitted MS4 discharges and nonpoint source discharges. These discharges are sources of pollution and negatively impact water quality. Reduction of the negative impacts of these discharges is an important priority to the State Water Board. Thus for SWQPA-GPs, permitted MS4 discharges and nonpoint source discharges to an SWQPA-GP require elevated restrictions to be similar to current Ocean Plan requirements for POTW discharges. In addition, under federal and state law, MS4 discharges must meet water quality objectives contained in the relevant water quality control plan, the Ocean Plan.

Comment 4.3

The proposed requirements specified in the proposed amendment E.5(c) appear contrary to the intent of the legislature (Marine Life Protection Act) in establishing MPAs.

Response 4.3

Staff disagrees. The designation of a MPA, in itself, does not lead to new requirements on water quality. The Clean Water Act and the Porter-Cologne provide the State Water Board with the jurisdiction to protect the beneficial uses of California's waters. To provide protection of the beneficial uses of the unique and valuable marine fauna and flora in MPAs, SWQPA-GP can be designated after a full public process with CEQA, as described in Appendix IV.

Additionally, as discussed in Response 4.2, in the Ocean Plan wastewater discharges are strictly regulated in contrast to ocean storm water discharges. The purpose for SWQPA-GPs is to have protection from an undesirable alternation in natural water quality. Since storm water discharges in the Ocean Plan have minimal restrictions, this proposed amendment has implementation provisions for permitted MS4 discharges and nonpoint source discharge to achieve the objectives of SWQPA-GPs.

Comment 4.4

The scope of the possible future SWQPA-GP designations needs to be clearly described, as it is unclear as to what areas will be designated as SWQPA-GPs.

Response 4.4

Please see Response 1.2. Future designation of SWQPA-GPs is limited to co-location with State Marine Parks and State Marine Conservation Areas in California's ocean waters.

Comment 4.5

To identify problems in MPAs, these proposed SWQPA criteria should utilize a multiple lines of evidence approach similar to that used by the State Water Board for establishing sediment quality objectives: chemistry, toxicity, and biological community impacts.

Response 4.5

The designation of the MPAs was conducted with an extensive public-private partnership, which used the best readily available science and the advice and assistance of scientists, resource managers, experts, stakeholders and members of the public. The designation of an SWQPA-GP will occur after a public process and compliance with CEQA documentation requirements for a water quality control plan amendment. Those monitoring requirements will incorporate a multiple lines of evidence approach. In addition, the State Water Board staff is proposing a Model Monitoring Amendment to the Ocean Plan, which will be a question-driven monitoring approach that is focused on assuring compliance with narrative and numeric water quality standards, the status and attainment of beneficial uses, and identifying sources of pollution.

Comment 4.6

The current approach in the Staff Report and proposed amendment of establishing statewide requirements is contrary to California's Water Code and marine protections acts. More flexibility is needed to more effectively address specific regional and local conditions.

Response 4.6

Staff disagrees. The Marine Managed Areas Improvement Act was intended to more effectively organize, designate, and manage the state's many different marine managed areas and provide consistency among the state agencies that administer, manage, and designate the areas. While the MPAs, through the Marine Life Protection Act, are established on a regional basis, together the MMAs are a statewide system. The proposed amendment will aid the State Water Boards' flexibility to tailor the designation of SWQPAs in a manner consistent with the goals and objectives of establishing the MPAs. The proposed amendment will also provide the coastal Regional Water Boards with a cohesive or consistent statewide framework to address water quality protection within MPAs. For existing and future permittees and respective rate payers situated near MPAs, these proposed amendments will create greater regulatory certainty to plan and budget future repairs or replacement projects for possible future SWQPA-GP designations.

Comment 4.7

The Staff Report lacks information or examples of how representative MS4 dischargers will comply with the requirements as currently structured.

Response 4.7

The proposed amendment only provides the framework for an SWQPA-GP. The proposed amendment does not designate any areas as an SWQPA-GP. Implementation and compliance will occur on an SWQPA-GP by SWQPA-GP basis, and thus the draft SED is unable to provide specific examples of compliance. For designated SWQPA-GPs, under federal and state law, MS4 dischargers will comply with water quality objectives that are stated within the water quality control plan, and will not cause undesirable alteration in natural water quality.

Comment 4.8

Clarify the dual compliance goals described Provisions E.5.(c)(1) and E.5.(c)(5-7).

Response 4.8

Staff disagrees that there are dual compliance goals present. Meeting the Ocean Plan instantaneous and daily maximum objectives is an attainable metric toward measuring whether an intermittent discharge causes a problem. Provision E.5.(c)(1) simply defines what is entailed in preventing undesirable alteration in natural water quality. The provisions in E.5.(c)(5-7) simply provide an assessment and iterative approach to prevent undesirable alteration in natural water quality.

Comment 4.9

CASQA thinks that dry weather discharges are banned with no exceptions.

Response 4.9

Please see Response 1.6.

Comment 4.10

CASQA thinks the costs and impacts of corrective measures, such as dry weather diversions and end-of-pipe treatment, need to be evaluated.

Response 4.10

Please see Response 1.6. Corrective measures such as dry weather diversions are not mandated, and thus there are no required costs and impacts to be evaluated in the Staff Report and draft SED.

Comment 4.11

The SWQPA-GP implementation provisions are intended to be less, rather than more stringent, than SWQPA-ASBS provisions. However, the proposed SWQPA-GP implementation provisions appear to allow no exceptions or alternatives to compliance.

Response 4.11

Staff disagrees. The proposed framework for SWQPAs-GP is intended to be an intermediate level between the baseline Ocean Plan provisions and the ASBS. Exceptions are not needed since the only discharges banned into SWQPA-GPs are new point source discharges, new seawater intakes, and increases of nonpoint sources or permitted storm drains.

Comment 4.12

The Staff Report needs to address the absence – except for limited topics – of identified impacts of this Regulatory Action in the SED and CEQA checklist.

Response 4.12

The proposed amendment provides the framework for SWQPA to protect MPAs through the proposal of a new subset named SWQPA-GP. As described in Appendix IV of the proposed amendment, the designation of SWQPAs-ASBS and SWQPAs-GP must follow the public process and compliance with CEQA documentation requirements for a water quality control plan amendment. Thus in the public process for designation, potential environmental impacts associated with designation will be analyzed and disclosed in compliance with CEQA.

Comment 4.13

The significance of the State Marine Reserves needs to be clarified. The intent of the amendment are apparently to ban discharges into State Marine Reserves that are not ASBS; however, no information is presented on how many discharges currently enter these reserves, the effects of these discharges, or the need for the prohibition.

Response 4.13

This significance of the State Marine Reserves can be found through the Marine Managed Areas Improvement Act and the Marine Life Protection Act (MLPA). This is specifically found with Section 5.6.2 in the Staff Report. In the MPA hierarchy, State Marine Reserves have the strictest restrictions on take of marine life.

The proposed amendment provides the framework for the SWQPA-GP, which designated “to protect or conserve marine life and habitat within State Marine Parks and State Marine Conservation Areas”. Thus SWQPA-GPs will not be designated over State Marine Reserves. Since State Marine Reserves have the strictest restrictions out of the three MPA categories, only an ASBS and not an SWQPA-GP can be co-located with a State Marine Reserve.

Comment 4.14

The SWQPA-GP nomination and designation process needs to be explained. The amendment to Appendix IV, which sets forth the nomination designation process, is unclear.

Response 4.14

The title for Appendix IV has been updated in the Staff Report and draft SED to provide more clarity for the procedures for the nomination and designation of SWQPA-GP. Within Appendix IV the procedures address both SWQPA-ASBS and SWQPA-GP, the nomination criteria are spelled out in Provisions 1.(a)(1) through (3) to specify information necessary to determine the need for designation as either category of SWQPA.

Comment 4.15

The compliance schedule for regulated dischargers needs to provide a transition period. As currently structured, the compliance requirements including the ban on dry weather flow must occur immediately.

Response 4.15

Please see Response 1.6. The compliance schedule for a ban on dry weather flow would be included in the applicable permit, which will be reopened following SWQPA-GP designation.

Comment 4.16

Source Control alternatives need to be recognized. The Staff Report and SED do not address pollution prevention or source control as methods for addressing pollutants that may present a risk to MPAs.

Response 4.16

Staff agrees that pollution prevention and source control are methods to address pollutants. For the proposed framework for SWQPA-GPs, pollution prevention and source control will be part of the implementation and compliance options for meeting water quality objectives. However, such efforts will not be necessary until the SWQPAs are designated, which is a separate public process in the future.

Comment 4.17

Flow reduction/loading reduction approaches need to be viable compliance options.

Response 4.17

Flow reduction and loading reduction approaches can address pollutants as long as the discharges still meet the water quality objectives. For the proposed framework for SWQPA-GPs, flow reduction may be part of the implementation and compliance. These approaches should be addressed in specific and future permits after the designation of a new SWQPA.

Comment 4.18

The Staff Report should identify the costs and rationale for monitoring, which is very extensive and appears to go beyond the monitoring required for compliance.

Response 4.18

The rationale for monitoring is to understand what is being discharged to the SWQPA-GPs and to determine if the discharges are impacting beneficial uses. The required monitoring is necessary for compliance. These monitoring measures will be coordinated with the proposed amendments to the Ocean Plan for Model Monitoring, which includes an analysis of costs associated with the different types of monitoring. The Model Monitoring amendment is a question-driven monitoring framework to include regional monitoring, specific storm water monitoring, and specific non-point source monitoring and to focus on assuring compliance with narrative and numeric water quality standards, the status and attainment of beneficial uses, and identifying sources of pollution.

Letter 5: From Miyoko Sakashita of the Center for Biological Diversity

Comment 5.1

The proposed amendments to the Ocean Plan, while regulating some current and potential future emissions in MPA areas, do precious little to address so-called “low threat” forms of water pollution. Center for Biological Diversity does not believe that dischargers should be grandfathered and allowed to continue to pollute.

Response 5.1

Staff agrees that the focus of the proposed amendments is to address “high threat” forms of water pollution. Staff thinks the proposed amendments, combined with the very strict water quality objectives in the Ocean Plan, will provide substantial and adequate protection in most cases for the beneficial uses that will be present in designed SWQPA-GP and overlapping Marine State Parks or Marine State Conservation Areas.

Comment 5.2

Center for Biological Diversity is concerned that the draft SED analysis of the costs of regulating existing sources of water pollution that affect MPAs is limited. It pays almost no attention to the potential economic benefits of mitigation, including: increased fishery health and productivity, increased tourism value in MPA areas, and the cost-saving efficiency of adopting modern pollution control technology.

Response 5.2

There is a growing body of international evidence of the environmental and economic benefits from the designation of MPAs. The National Oceanic and Atmospheric Administration (NOAA) clearly recognizes that MPAs provide natural resource protection, historical and cultural

resource protection, and social and economic benefits. These benefits are directly applicable to California's network of MMAs.

These potential benefits are part of the purpose of the proposed amendment to strengthen the objectives of the MPA network being established along the California coastline. These benefits have been added to the draft SED in Project Issues Alternatives: SWQPA Categorizes section (5.7.3). However, under state law staff does not perform a cost benefit assessment.

Letter 6: From Brad Fowler of City of Dana Point

Comment 6.1

The proposed amendment does not appear to recognize the fact that MS4s are also already regulated by NPDES permits and in many instances, a higher level of protection via Total Maximum Daily Loads (TMDL).

Response 6.1

Staff disagrees. The proposed amendment does recognize that MS4s are regulated by NPDES permits. NPDES permits are written to implement the requirements of the Ocean Plan and other water quality control plans and policies. The purpose of the proposed amendment is to provide a statewide framework for both Regional Water Boards and State Water Board permit writers and permittees if there are discharges into SWQPA-GPs. The intention is to provide a clear and consistent permitting process for discharges into SWQPA-GPs. The proposed amendment will protect the CWA Section 303(d)-listed waterbodies that drain to MPAs and SWQPAs for high priority TMDL development.

Comment 6.2

On Page 1, the statement is made that, "Based upon the review and analysis described in this SED, the proposed amendments if adopted are not expected to result in significant impact on the environment." It is unclear if the drafter's intent in this statement is to take the position that since no SWQPAs are being designated in this document, there are no environmental impacts and that it is assumed that the Regional Boards will have to provide a CEQA analysis for each SWQPA they later may choose to designate. Please clarify if this is the case.

Response 6.2

The proposed amendment does not designate any new SWQPAs. These proposed amendments provide the framework for SWQPA to protect MPAs through the proposal of a new subset named SWQPA-GP. As described in Appendix IV of the proposed amendments, each nomination for new designation of an SWQPA-ASBS and/or an SWQPAs-GPS must follow the public process and comply with CEQA documentation requirements.

Comment 6.3

Clarify possible contradiction between the following two statements.

1. "Based upon the review and analyses described in this SED, the proposed amendments if adopted, are not expected to result in significant impact on the environment" on Page 1.
2. "Construction associated with these efforts could pose significant impacts to air, water quality and biological resources and jeopardize habitat in other areas along the coast thru new construction...Storm water conveyance systems minimize flooding in built up areas. Relocation of these outfalls and conveyance systems may require substantial and costly construction as well" on Page 33-34.

Response 6.3

No contradiction is present between these statements. This amendment will not result in environmental impacts. No new SWQPAs are being designated. Staff agrees that relocation of outfall and conveyance systems may require substantial and costly construction. Stated in the proposed amendments, the “designation of SWQPA-GP shall not include conditions to move existing point source wastewater outfalls”.

Comment 6.4

Cost/benefit considerations applied to wastewater should also be applied to stormwater.

Response 6.4

The Water Boards do not conduct cost/benefit assessment when amending water quality control plans. Costs will be assessed during the process for individual designation of an SWQPA-GP through the compliance with CEQA documentation requirements for a water quality control plan amendment.

Additionally, as discussed in Response 4.3, in the Ocean Plan wastewater discharges are strictly regulated in contrast to ocean storm water discharges. The objective for SWQPA-GPs is to have protection from an undesirable alternation in natural water quality. Since storm water discharges in the Ocean Plan currently have minimal restrictions, this proposed amendment has implementation provisions for permitted MS4 discharges and nonpoint source discharge to achieve the objectives of SWQPA-GPs.

Comment 6.5

The proposed language on page 27 of the Staff Report, 5 CEQA Review and Analysis, makes several references to “Basin Plan”; however it is understood that this document is proposed amendment to the Ocean Plan. Please clarify.

Response 6.5

This is an Ocean Plan amendment, and the typographical error will be corrected in the next draft of the Staff Report and draft SED.

Comment 6.6

It appears that the provisions for SWQPAs-GP are more restrictive than those recently adopted by ASBS’s.

Response 6.6

Please see Response 4.11.

Comment 6.7

The City of Dana Point questions what scientific proof of impairment is this amendment based on.

Response 6.7

The proposed amendment is not directly based on scientific proof of impairments. The proposed amendment is based on creating a framework to protect the beneficial uses within State Marine Parks and State Marine Conservation Areas that have been designated along the California coastline through the Marine Life Protection Act. MPAs are designated to protect or conserve marine life and habitat, specifically rare, threatened, or endangered native plants, animals, or habitats in marine areas. Through the Porter-Cologne Water Quality Control

Act, the State Water Board has the authority to protect the beneficial uses of the ocean water of the State. Since MPAs are designated with unique marine life, protecting the water quality for their health, survival, and propagation is a high priority. The proposed amendment aims to fulfill the role of the State Water Board by creating a framework for State Water Quality Protection Areas that will provide an intermediate level of protection between the baseline Ocean Plan and ASBS designation to protect the beneficial uses of species or biological communities for State Marine Parks and State Marine Conservation Areas.

Comment 6.8

This amendment is not required by Federal law under the CWA. It is based upon California State's designation of MPAs. This will result in a number of new unfunded mandates on local agencies.

Response 6.8

The Ocean Plan is the federally approved water quality control plan for the State's ocean waters under the CWA. The water quality objectives in the Ocean Plan must currently be met by all dischargers (wastewater, storm water and nonpoint sources). The proposed amendment sets forth a consistent statewide framework for SWQPA-GPs to protect beneficial uses of MPAs. The Ocean Plan is not an unfunded state mandate, but rather a federally required water quality control plan.

The proposed amendment to the Ocean Plan is not designating SWQPAs and does not require any action on the part of any specific entity. Thus, the proposed amendment is not unfunded mandates subject to subvention under Article XIIIB, Section (6) of the California Constitution.

Comment 6.9

Higher priority designation of SWQPA's should not be based upon CWA Section 303(d) impairments for standards currently under review by the state (for example, shellfish).

Response 6.9

Staff disagrees. The presence of CWA Section 303(d) listed waterbodies will not influence the designation priority of an SWQPA-GP. However, CWA Section 303(d) listed waterbodies that drain into an SWQPA-GP will be given higher priority for TMDL development and implementation. Furthermore, CWA Section 303(d) listing are based on water quality objectives currently in effect and not proposed amendments to the Ocean Plan or Basin Plans.

Comment 6.10

City of Dana Point requests to add the word "directly" to Provision E.5.(d)(3) "these shall be no increase in nonpoint sources or permitted storm drains into SWQPA-GP".

Response 6.10

Staff agrees. The proposed amendment was revised to include the "directly" to Provision E.5.(d)(3).

Comment 6.11

City of Dana Point requests that Natural Sources Exclusion should be mentioned in case Ocean Plan objectives are exceeded. For example, Salt Creek, which enters Dana Point's MPA, is naturally high in both salts and iron.

Response 6.11

Staff recognizes that at some local areas have high natural sources of constituents that may violate water quality objectives. Staff does not propose adding Natural Sources Exclusion to the proposed amendment for the framework of SWQPA-GPs, as it is neither present in the Ocean Plan nor with ASBSs. Further, the Ocean Plan is the federally approved water quality control plan for the State's ocean waters under the CWA. The water quality objectives in the Ocean Plan must currently be met by all dischargers (wastewater, storm water and nonpoint sources).

Comment 6.12

No MS4 applicable drain size is indicated in the document.

Response 6.12

Staff does not propose including limits to MS4 applicable drain size for the determination of which drains pose the greatest relative threat. There is no basis to prioritize drains of greatest relative treat, and thus not specifying drain size will provide dischargers with greater flexibility in their compliance plans. It is important to state that the exclusion of drain size will not result in monitoring all drains.

Letter 7: From Travis Hopkins of City of Huntington Beach

Comment 7.1

Provide clarification that the proposed amendment references a number of MPAs that are estuaries suggesting that these may be subject to future SWQPA-GP designation.

Response 7.1

The California Ocean Plan is applicable to 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. Thus future SWQPA-GP designation, as described in these proposed amendments, is not applicable to MPAs designated in enclosed bays, estuaries, and coastal lagoons.

Comment 7.2

The requirement for universal diversion of dry weather discharges to POTWs has many constraining factors that require analysis.

Response 7.2

Please see Response 1.6.

Letter 8: From Jane Egly of City of Laguna Beach

Comment 8.1

City of Laguna Beach requests the selection of the no-action option detailed in the CEQA process.

Response 8.1

While staff considered the no-action alternative, staff do not propose recommending the no-action alternative. The proposed amendment with the establishment of the framework for SWQPA-GPs will further the State Water Board's mission to protect the beneficial uses of ocean waters, specifically within State Marine Parks and State Marine Conservation Areas. The proposed amendment will support the established MPA networks and provide a cohesive and consistent statewide regulatory framework for the State Water Board, the coastal Regional Water Boards, and existing and future permittees.

Comment 8.2

Require a data-driven designation process in which only a science committee may assign SWQPA designation to MPAs based on bacterial, physical, chemical, biological, and radioactive characteristics of the receiving waters and the protection of beneficial uses.

Response 8.2

The MPA designation has been based on scientific advice and a stakeholder process. This is being accomplished with the advice and assistance of a science advisory team (SAT), the California Department of Fish and Game (DFG), MLPA Initiative staff, the public and a policy-level blue ribbon task force (BRTF). Thus, the designation of MPAs is based on scientific evidence, as well as informed input from a variety sources with experience and expertise in water quality and protection of marine life. Future SWQPA-GP designation will follow in the extensive work of the Marine Life Protection Act (MLPA) Initiative. Designation of SWQPA, both ASBS and GP, requires a public process and CEQA compliance, which will include a data-driven process based on sound science.

Comment 8.3

City of Laguna Beach requests to exempt storm drains with existing regional storm water permits from new requirements.

Response 8.3

Staff disagrees. If an SWQPA-GP is designated at a location with existing regional storm water permits, then that permit may be modified to meet the implementation provisions of the proposed amendment. This would be applicable to each storm drain system draining into a designated SWQPA-GP. Compliance with the proposed amendment would occur in order to protect the beneficial uses under state and federal law.

Letter 9: From Tim Casey of City of Laguna Niguel**Comment 9.1**

The City of Laguna Niguel thinks it is unclear from the Staff Report as to what problem is being addressed by the proposed amendment.

Response 9.1

The Marine Managed Areas Improvement Act was intended to more effectively organize, designate, and manage the state's many different marine managed areas and provide consistency among the state agencies that administer, manage, and designate the areas. The State Water Board has designating authority for SWQPAs to protect and maintain natural water quality to support marine species and biological communities, while the California Department of Fish and Game and the Department of Parks and Recreation have designating authority for MPAs to protect or conserve marine life and habitat. The proposed amendment creates a framework for SWQPA-GPs for future possible designation at State Marine Parks and State Marine Conservation Areas in order to further protect the beneficial uses associated with the marine species, communities, and habitat in those MPAs. The proposed amendment provides an intermediate level of protection that will provide a more consistent statewide regulatory framework. The proposed amendment also provides more economically feasible option in contrast to an ASBS designation due to the level of monitoring and limited infrastructure modification.

Comment 9.2

It is unclear from the draft Staff Report whether the proposed amendment affects inland cities through storm water, dry weather runoff, and trash discharge.

Response 9.2

The proposed amendment would not affect inland cities through direct storm water and dry weather runoff to a possible future designation of SWQPA – GP in areas that are not CWA 303(d) listed. However, the amendment may affect inland cities discharging to CWA 303(d) listed waterbodies that drain to MPAs. This amendment would require prioritization of TMDLs in such areas.

The proposed amendment has been changed so that it will not address trash discharges. This will be addressed with new proposed amendments to statewide water quality control plans, including the Ocean Plan, for trash.

Comment 9.3

The proposed amendments take on the character of a new and overlapping set of municipal storm water regulations and/or TMDLs without going through the normal Regional Basin Plan Amendment and NPDES permitting processes.

Response 9.3

Staff disagrees. Under federal and state law, the NPDES permits implement the Ocean Plan and Basin Plans. The Ocean Plan establishes water quality objectives for California's ocean, provides the basis for regulation through NPDES permits of wastes discharged into the California's coastal waters, and is applicable to both point and non-point sources discharges. The State Water Board adopts the Ocean Plan and in conjunction with the six coastal Regional Water Boards, implements and interprets the Ocean Plan. The purpose of the proposed amendment is to establish a consistent statewide framework for SWPQA-GP. The intention is to not overlap existing municipal storm water regulations, NPDES permitting process, and TMDLs, but to provide implementation tools in the Ocean Plan to ensure the intermediate level of protection for areas that would be covered by the new SWQPA-GP designation.

Letter 10: From Frank Sun of City of Orange**Comment 10.1**

The proposed amendment is unclear whether Newport Bay or other enclosed bays and estuaries currently exempt from the Ocean Plan may be designated an SWQPA by the proposed amendments since it is listed as a State Marine Conservation Area.

Response 10.1

Please see Response 7.1.

Comment 10.2

Since all MPAs that may be designated as SWQPAs are known, a full analysis of factors consistent with Water Code Section 13241 should be provided.

Response 10.2

The proposed amendment in the draft SED does not designate any new SWQPAs. The proposed amendment provides the framework for SWQPA to protect MPAs through the proposal of a new subset named SWQPA-GP. The California Ocean Plan is applicable to 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. As described in Appendix IV of the proposed amendments, each nomination for new designation of an SWQPA-ASBS and/or an SWQPA-GPS must follow the public process and comply with CEQA documentation requirements. It is important to note that the State Water Board will have full discretion in designating SWQPAs. The fact that an MPA exists does not assume that the State Water Board will act to designate an SWQPA there. An analysis pursuant to Water Code section 13241 is not required at this time for a series of potential actions that could be undertaken by the State Water Board at a future time.

Letter 11: From Tom Odom of City of Rancho Palos Verdes

Comment 11.1

City of Rancho Palos Verdes requests for more explicit definition of the term “natural ocean water quality”.

Response 11.1

It is not practical within the available resources to identify the exact natural water quality for each potential SWQPA-GP, but it is practical and scientifically defensible to identify reference conditions that are reliable proxies for natural water quality on a regional basis.

State Water Board staff’s efforts are underway to better define natural water quality through reference sites. An ASBS natural water quality committee was established under State Water Board Resolution 2004-52. The committee concluded that it is not practical to identify a unique seawater composition as exhibiting natural water quality. However, it should be possible to define a reference area or areas that approximate natural water quality for an SWQPA and any detectable human influence on the water quality must not hinder the ability of marine life to respond to natural cycles and processes. For more information on the findings of the committee see: http://www.waterboards.ca.gov/water_issues/programs/ocean/asbs_nwqcommittee.shtml

Comment 11.2

The City of Rancho Palos Verdes hopes that SWQPA-GP activities will not duplicate or, worse, conflict with MS4, NPDES, and TMDL requirements.

Response 11.2

Staff agrees. The purpose of the proposed amendment is to create a more cohesive or consistent statewide framework to be implemented by both the State Water Board and the Regional Water Boards. Designation of an SWQPA-GP will not duplicate or conflict with MS4, NPDES, and TMDL requirements. Together, SWQPA-GP designation and respective permits will work together to protect the beneficial uses of the ocean waters of the state.

Comment 11.3

During the SWQPA designation process, the City of Rancho Palos Verdes requests that the DDT Superfund site at White’s Point and the active landslide area on the Palos Verdes Peninsula are taken into consideration.

Response 11.3

As described in Appendix IV of the proposed amendment, each nomination for new designation of an SWQPA-ASBS and/or an SWQPAs-GP must follow the public process and comply with CEQA documentation requirements. If an SWQPA-GP is nominated for the Point Vicente State

Marine Conservation Area and/or Abalone Cove State Marine Conservation Area, the DDT Superfund site near the White Point outfall and the active landslide area on the Palos Verdes Peninsula will be taken into consideration as part of the site-specific designation process.

Comment 11.4

The difference between SWQPA-ASBS and SWQPA-GP are not sufficiently defined. It appears that an SWQPA-GP designation could potentially have the same restrictions as an SWQPA-ASBS.

Response 11.4

SWQPA-GPs are proposed in order to provide an intermediate level of protection between the baseline provisions of the Ocean Plan and the strict provisions of an SWQPA-ASBS. Provision E.(5) of the proposed amendments outlines the provisions for SWQPA-GP. The primary difference between SWQPA-GP and SWQPA-ASBS is that no discharge of waste is allowed in an SWQPA-ASBS, while low levels of discharges will be allowed into SWQPA-GPs.

Comment 11.5

The City questions whether there is scientific support for the proposed designation of SWQPA-GPs when TMDLs are already in place and were found to be sufficient at protecting water quality in these areas.

Response 11.5

The proposed amendment is not directly based on scientific proof of specific impairments. The proposed amendment is based on creating a framework for State Water Quality Protection Areas that will provide an intermediate level of protection between the baseline Ocean Plan and ASBS designation to protect the beneficial uses of species or biological communities for State Marine Parks and State Marine Conservation Areas. The purpose of the proposed amendment is to create a cohesive and consistent statewide framework, in contrast to leaving the coastal Regional Water Boards to address water quality protection within MPAs on a case-by-case basis.

Comment 11.6

There is no compliance schedule or implementation period discussed in the amendment.

Response 11.6

The amendment being proposed by staff does not amend existing water quality objectives or add new water quality objectives. The proposed amendment would add a new category of SWQPAs that would protect natural water quality within MPAs. The proposed amendment also clearly defines a process for designating these areas. The proposed amendment does not include the designation of any new SWQPAs or require any action that could be subject to implementation or a compliance schedule. Therefore, since designation and implementation of an SWQPA-GP will occur on a case-by-case basis, compliance schedules and implementation periods are unable to be outlined and discussed within the proposed amendment.

Letter 12: From Kris McFadden of City of San Diego

Comment 12.1

The City of San Diego is concerned the draft Ocean Plan Amendment may constitute an unfunded mandate.

Response 12.1

The Ocean Plan is the federally approved water quality control plan for the State's ocean waters under the CWA. The objectives in the Ocean Plan must currently be met by all dischargers (wastewater, storm water and nonpoint sources). The proposed amendment sets forth a consistent statewide framework for SWQPA-GPs to protect beneficial uses of MPAs. The Ocean Plan is not an unfunded state mandate, but rather a federally required water quality control plan. The State Water Board is not required to reimburse dischargers for their monitoring programs required by permits, which are necessary components of the NPDES permit program and required by federal regulations pursuant to the Clean Water Act. See, 40 C.F.R §122.48, §122.44(h).

The proposed amendment to the Ocean Plan are not themselves designations of SWQPAs and do not require any action on the part of any specific entity. Thus, the amendments are not unfunded mandates subject to subvention under Article XIII B, Section (6) of the California Constitution.

Comment 12.2

The City is concerned that available data have not been analyzed sufficiently to justify such an extensive and costly effort.

Response 12.2

The objectives of these proposed amendments is to provide a framework for SWQPA-GP that can be designated over MPAs. Until SWQPA-GPs are designated after a public process that incorporates compliance with CEQA and other applicable laws, these proposed amendments do not have a monetary impact.

Comment 12.3

This program, as proposed, will dramatically increase costs and draw resources away from other necessary storm water quality programs and projects.

Response 12.3

The Ocean Plan is the federally approved water quality control plan for the State's ocean waters under the Clean Water Act. The objectives in the Ocean Plan must currently be met by all dischargers (wastewater, storm water and nonpoint sources). SWQPAs and MPAs are a vital resource for protection of the state's ocean waters. However, no new SWQPAs are being designated at this time. Therefore, the proposed amendment will not affect the City's resources and budget.

Comment 12.4

Economic considerations are lacking yet required under Water Code Section 13241 when adopting water quality objectives.

Response 12.4

The proposed amendment does not adopt new water quality objectives or alter existing water quality objectives; therefore, Water Code section 13241 does not apply to these proposed amendments to the Ocean Plan. An analysis pursuant to Water Code section 13241 is not required for a series of potential actions that could be undertaken by the State Water Board at a future time. In addition, Provision E.5.(c)(2), regarding the discharge of trash, has been removed from the draft of the proposed amendment. Currently, the State Water Board is developing new amendments to statewide water quality control plans, including the Ocean Plan, for trash.

Comment 12.5

A receiving water dilution zone must be considered for compliance purposes in marine receiving water environments influenced by freshwater runoff, as allowed in Ocean Plan Appendix I Definition of Terms.

Response 12.5

Marine species have varied tolerances to salinity changes, but generally are adapted to salinities that range from brackish to marine (i.e. approximately 33 ppt). Discharges such as wastewater and storm water are typically very low in salinity, similar to fresh water. For wastewater, rapid mixing is encouraged and a zone of initial dilution is allowed. Since storm water discharges are not given effluent limits, the zone of initial dilution (i.e. a dilution factor) is not relevant. Sample locations for storm water toxicity should represent worst case conditions, but the laboratory toxicity testing procedures account for the adjustment of salinity so that low salinity is not a cause for mortality or effect.

Comment 12.6

A clear “weight of evidence” approach, consistent with State Board policies, is lacking in the proposed amendment.

Response 12.6

Staff agrees that the ocean environment is complex and a multiple-lines-of-evidence approach captures the complexity in a meaningful way, in contrast to a single chemical concentration line of evidence. The proposed amendment, if adopted, will be coupled with the proposed Model Monitoring Amendment to the Ocean Plan, which will be a question-driven monitoring approach and focus on assuring compliance with narrative and numeric water quality standards, the status and attainment of beneficial uses, and identifying sources of pollution.

Comment 12.7

Proposed amendment is inconsistent with recent TMDLs, which include exemptions for sources that are not controllable by municipalities.

Response 12.7

Please see Response 6.11.

Comment 12.8

City of San Diego requests that toxicity test exposures and test duration need further consideration for current monitoring methods and compliance limits.

Response 12.8

Please see Response 12.5.

Comment 12.9

City of San Diego requests that intertidal/subtidal biological surveys be included as a line of evidence to evaluate cumulative impacts related to individual discharges.

Response 12.9

Benthic biological surveys will be included in Ocean Plan monitoring requirements with the proposed amendment to the Ocean Plan for Model Monitoring.

Comment 12.10

Golf courses are highlighted as a high threat category requiring a prohibition on discharges without justification.

Response 12.10

The draft SED does categorize golf courses as a high threat category. In general, the State Water Board considers golf courses to be a high threat for pollution due to the use of pesticides, herbicides, and overwatering.

Comment 12.11

The 'Staff Recommendation' section in the draft Staff Report and SED references Section 5.4 incorrectly; Section 5.7.3 should be referenced.

Response 12.11

Staff appreciates the typographical comments. Corrections have been included in the revised draft of the proposed amendment, draft Staff Report, and draft SED.

Comment 12.12

First paragraph, last sentence – “through” is misspelled and the 2nd bullet following the first paragraph – “golf” is misspelled in the CEQA Review and Analysis – Protecting MPA Section.

Response 12.12

Please see Response 12.11.

Comment 12.13

In the CEQA Environmental Impact Analysis Section, the second paragraph, third sentence – “alteration” is misspelled and the third paragraph, third to last sentence has a hanging sentence.

Response 12.13

Please see Response 12.11.

Letter 13: From Mark Grey of Construction Industry Coalition on Water Quality

Comment 13.1

The Commenter is concerned the proposed amendment is far more stringent than the recent protection adopted for ASBS, even though it appears from State Board Resolution Nos. 2010-0057 and 2011-0013 that the proposed amendments are intended to provide a level of protection for MPAs that falls somewhere between ASBS and the level afforded to the ocean in general by the Ocean Plan.

Response 13.1

Please see Response 4.11. Requirements for existing storm drains would be much less stringent for SWQPA-GPs as compared to ASBS. However, in both cases, no new discharges would be allowed in either ASBS or SWQPA-GPs.

Comment 13.2

Water Code Section 13241 requires assessment of specific factors when adopting water quality objectives, including economic considerations.

Response 13.2

Please see Response 12.4

Comment 13.3

Application to storm water is excessive and will result in huge costs with little or no environmental benefit.

Response 13.3

Staff disagrees. The application to storm water for designated SWQPA-GPs will protect the beneficial uses of the unique and valuable marine fauna and flora in MPAs under the authority of the CWA and Porter-Cologne. Please see Responses 4.2 and 4.3.

Letter 14: From Gary Hilderbrand of County of Los Angeles Department of Public Works on behalf of Los Angeles County Flood Control District

Comment 14.1

The Los Angeles County Flood Control District thinks the proposed SWQPA-GP requirements are overly restrictive and not reflective of a true two-tiered system framework.

Response 14.1

Staff disagrees. The SWQPA-GP requirements are not overly restrictive and are reflective of a two-tiered system framework. SWQPA-GP provides an intermediate level of protection between the baseline Ocean Plan and SWQPA-ASBS provisions. SWQPA-GPs may continue to allow some moderate and low threat discharges to continue, which is contrary to an SWQPA-ASBS where no discharges are allowed (except for those in compliance with the newly adopted General Exceptions). In addition, the proposed amendment does not mandate a universal dry weather diversion of non-storm water flows to municipal sewer systems. Non-storm water would be prohibited as required by the applicable permit. Thus, if the applicable permit does not require dry weather flow diversion, then diversion of dry weather flows will not be mandated through these proposed amendments.

Comment 14.2

The Los Angeles County Flood Control District thinks there is a need for an environmental impact analysis.

Response 14.2

Please see Response 4.12.

Comment 14.3

The term “natural ocean water quality” should be defined in the “definition of terms” section.

Response 14.3

Please see Response 11.1.

Comment 14.4

Revisions to Provisions E.5.(c)(2),(4), and (5) to exchange the use of Table 1 with pre-storm reference concentration as the unit of measure for an undesirable alteration in natural water quality.

Response 14.4

Staff considered the suggested language to Provisions E.5.(c)(2),(4), and (5) (as numbered in the February 23, 2012 draft), and will retain the existing language to the sections in order to maintain the intention of the proposed implementation of Resolution No. 2010-0057. The Table 1 chemical objectives are attainable metrics toward measuring whether the discharge is undesirably altering natural water quality.

[Editorial Note: The Provisions discussed in Comment/Response 14.4 are renumbered as Provisions E.5.(c)(3), (6), and (7) in the Draft Final SED.]

Letter 15: From Grace Chan of County Sanitation Districts of Los Angeles County

Comment 15.1

The County Sanitation Districts of Los Angeles County think the draft amendment needs to be modified to include all the intended language included in the Resolution so as to fully realize the intent of the State Water Board. The omissions of greatest concern are in Resolved Paragraphs 3.b and 3.c. The Sanitation Districts request that Provision E.5.(a) be modified to include two new sections to incorporate the exact language from Resolved Paragraphs 3.b and 3.c.

Response 15.1

Please see Response 2.3.

Comment 15.2

The County Sanitation Districts of Los Angeles County requests a modification to the SWQPA-GP definition.

Response 15.2

Please see Response 1.1.

Comment 15.3

The County Sanitation Districts of Los Angeles County requests a modification to the Provision E.2 of the Draft Amendments by removing the phrase “beyond those in existing law, regulations, and water quality control plans”.

Response 15.3

Please see Response 1.5.

Comment 15.4

The Draft Amendment contains several typographical errors in Section 5.6.2 Table 2 that should be corrected prior to finalizing the document.

Response 15.4

Please see Response 1.8.

Letter 16: From Christine Heinrichs, General Public

Comment 16.1

Ms. Christine Heinrichs supports the establishment of a new category of SWQPA that would protect natural water quality within MPA and other areas designated by the State Water Board.

Response 16.1

Staff appreciates the support for the new category of SWQPA.

Letter 17: From Jim Webb, General Public

Comment 17.1

Mr. Jim Webb supports the establishment of a new category of SWQPA that would protect natural water quality within MPA and other areas designated by the State Water Board.

Response 17.1

Staff appreciates the support for the new category of SWQPA.

Comment 17.2

Requests the inclusion of the prohibition of seawater intakes under 1 million gallons per day (MGD) and offer regulatory language for intakes between MPAs that might interrupt larval transport within the network of MPAs.

Response 17.2

The proposed amendment will not prohibit the intakes under 1 MGD since these intakes represent a low threat to the marine environment and prohibition against these existing intakes would provide little benefit relative to the costs of compliance. This size of intakes generally includes two types: permitted marine laboratories and aquariums that use water to support marine life for study and observation, and permitted desalination facilities that use water to provide backup and emergency water supplies in coastal waters with limited groundwater and surface water supplies. These are considered low threat intakes.

Letter 18: From Richard Hawley of Greenspace

Comment 18.1

Greenspace supports the establishment of a new category of SWQPA that would protect natural water quality within MPA and other areas designated by the State Water Board.

Response 18.1

Staff appreciates the support for the new category of SWQPA.

Letter 19: From Sarah Sikich of Heal the Bay, Sara Aminzadeh of California Coastkeeper Alliance, Joe Geever of Surfrider Foundation, Karen Garrison of NRDC, Kira Redmond of Santa Barbara Channelkeeper, and Garry Brown of Orange County Coastkeeper

Comment 19.1

Provision 2 (municipal point source wastewater discharge outfalls) is at odds with the primary purpose of the Ocean Plan to protect” the quality of the ocean waters for use and enjoyment by

the people of the State” which “requires control of the discharge of waste to ocean waters”. Provision 2 inappropriately carves out a blanket exception for continued municipal wastewater discharge and possible water quality and marine life and habitat degradation in MPAs.

The suggested modified provision is:

“The designation of State Marine Parks and State Marine Conservation Areas cannot serve as the sole basis for new or modified limitations, substantive conditions, or prohibitions existing municipal point source wastewater discharge outfalls. This provision does not apply to State Marine Reserves.”

Response 19.1

Staff agrees with the suggested language and incorporated the language (with the exception of changing ‘cannot serve’ to ‘may not serve’). MPAs are designated to protect or conserve marine life and habitat. Water quality has a critical role to the survival and health of the marine life in these areas. While MPA designation should not be the sole trigger for additional regulation, if there is degradation in marine life, habitat, and/or water quality then beneficial uses must be protected regardless of whether a MPA is present. Under the Ocean Plan as implemented in NPDES permits, point sources are strictly controlled.

Comment 19.2

Provision 5 (implementation for SWQPAs-GP) includes several implementation provisions for SWQPAs-GP which change existing Ocean Plan requirements in an arbitrary and inconsistent way. Additionally, the provisions create different water quality standards for SWQPAs-GP and SWQPAs-ASBS. This framework will be confusing and resource-intensive to implement for both Board staff and dischargers, particularly in the many areas along the coast where MPAs and ASBSs overlap.

Response 19.2

Staff disagrees. The purpose of the proposed amendment is to create a framework for a new category of SWQPA that provides an intermediate level of protection between the baseline Ocean Plan and ASBS designation for State Marine Parks and State Marine Conservation Areas. This new category will provide a cohesive, consistent statewide framework in contrast to a case-by-case approach. Additionally, State Marine Parks and State Marine Conservation Areas that are already co-located with an ASBS will not qualify for the further designation of SWQPA-GP, as to minimize regulatory confusion. The proposed amendment does not alter water quality standards within the Ocean Plan, but rather refines implementation tools for existing water quality objectives and protection of beneficial uses.

Comment 19.3

The groups ask for identification of the scientific and legal basis for the 1 MGD threshold.

Response 19.3

Please see Response 17.2.

Comment 19.4

The groups support the inclusion of Provision E.5.(b), which designates SWQPAs-GP implementation provision for existing seawater intakes to specify not allowing new surface water seawater intake but allowing new subsurface slant/horizontal well intakes where studies show no predictable entrainment or impingement.

Response 19.4

Staff appreciates the support for the inclusion of Provision E.5.(b). Staff agree with the suggested language and revised the proposed amendment to include the suggested language for provision E.5.(d)(2)(d).

Comment 19.5

The groups request an explanation for the rationale that Provision E.5.(c)(1) defines an undesirable alteration of natural water quality as that which exceeds Table 1 instantaneous maximum concentrations for chemical constituents, and daily maximum concentration for chronic toxicity.

Response 19.5

It is not practical within the available resources to identify the exact natural water quality for each potential SWQPA-GP. Meeting the Ocean Plan objectives through Table 1 by itself did not mean that natural water quality was maintained. Table 1 is an attainable metric toward measuring whether the discharge causes a problem. Furthermore, this approach recognizes the intermittent nature of storm water discharges. Table 1 objectives are very strict and protective of the marine life beneficial use.

Comment 19.6

The groups support the prioritization of TMDL development for impaired MPAs and SWQPAs, as well as impaired tributaries that drain to impaired MPAs and SWQPAs in Provision E.5.(c)(6).

Response 19.6

Staff appreciates the support for the inclusion of Provision E.6.

Letter 20: From Dean Kirk of Irvine Company**Comment 20.1**

The proposed MPA amendment is more stringent than the recent protections adopted for ASBS with the requirement to monitor all discharges regardless of the size of pipe and no exception process.

Response 20.1

Please see Response 4.11.

Comment 20.2

The proposed MPA amendment lacks clarity in terms of the water bodies to which they would be applied.

Response 20.2

Please see Responses 1.2 and 4.4.

Comment 20.3

The State Water Board must conduct analysis under Water Code Sections 13241 and 13242.

Response 20.3

Please see Response 12.4.

Comment 20.4

The State Water Board must conduct a full and appropriate CEQA analysis prior to adoption.

Response 20.4

Please see Response 4.12.

Comment 20.5

Application to stormwater is excessive, and will result in huge costs with little or no environmental benefit.

Response 20.5

Staff disagrees. The framework for SWQPA-GP is to create an intermediate level of protection of beneficial uses in between the baseline Ocean Plan and ASBS. Storm water poses a threat to the beneficial uses of ocean water quality. The implementation provisions applied to storm water are not excessive but necessary under the Clean Water Act and the Porter-Cologne. Please see Responses 4.2 and 4.3.

Letter 21: From Sarah Hardgrave of Monterey Regional Storm Water Participants Groups

Comment 21.1

The requirement that receiving waters at the point of discharge may not exceed Table 1 instantaneous maximum objectives of the Ocean Plan, imposed to protect the beneficial uses of Marine Managed Areas, may not be feasible for municipalities to meet without treatment controls.

Response 21.1

The Ocean Plan is a federally approved water quality control plan for the state's ocean waters under the Clean Water Act and the Porter-Cologne. The water quality objectives in the Ocean Plan must be met by all dischargers (wastewater, storm water and nonpoint sources). Best management practices are available to control storm water discharges.

Comment 21.2

According to the proposed amendment, dry weather discharges are banned with no exceptions.

Response 21.2

Please see Response 1.6.

Comment 21.3

The Monterey Regional Storm Water Participants Groups think the CEQA analysis provided is not extensive enough.

Response 21.3

Please see Response 4.12.

Comment 21.4

The Monterey Regional Storm Water Participants Groups think the State Water Board has not demonstrated the estimated costs bear a reasonable relation to benefits of the monitoring program.

Response 21.4

Please see response 4.18. Furthermore, under the Water Code, there is no requirement to perform cost/benefit analysis.

Letter 22: From Richard Bell of Municipal Water Districts of Orange County

Comment 22.1

The Municipal Water Districts of Orange County ask for clarification on the definition in Appendix I for SWQPA-GP for consistency with Marine Manage Areas Improvement Act.

Response 22.1

Please see Response 1.1.

Comment 22.2

Revise the proposed amendment Provision E.1.(a)(2) description of SWQPA-GPs to be consistent with the SWRCB Resolution No. 2010-0057 and staff's intent, through these proposed amendments, is protect MPAs.

Response 22.2

Please see Responses 1.2 and 4.4.

Comment 22.3

The Municipal Water Districts of Orange County ask for clarification on the process for designation of future SWQPA-GPs.

Response 22.3

Please see Response 4.14.

Comment 22.4

The Municipal Water Districts of Orange County ask for a revision of the proposed amendments to allow subsurface intakes in SWQPAs.

Response 22.4

The proposed amendment and prohibition of intakes is only intended to address surface water intakes. Staff agrees that subsurface slant/horizontal intakes or other environmentally protective subsurface intake technology is allowable in SWQPA-GPs. The proposed amendment have been revised to include the suggested language for Provision E.5.(d)(2).

Comment 22.5

The Municipal Water Districts of Orange County requests revisions to the proposed amendment to allow changes in the composition of existing ocean discharges from existing outfalls may change over time.

Response 22.5

The Ocean Plan always allows for changes in the composition of existing ocean discharges through the public process. Discharge specific changes are further addressed with the respective permits. Staff does not think the proposed amendment need to be revised for this purpose.

Letter 23: From Mary Anne Skorpanich of Orange County Public Works

Comment 23.1

Provision E.5.(c) should be revised to delete references to existing MS4 discharges. The proposed Provision E.5.(c) conflicts with Provision E.5.(a) and contrary to the Marine Managed Areas Improvement Act.

Response 23.1

Staff disagrees. While wastewater is not defined within the Ocean Plan or the Water Code, staff believes that general usage of the term throughout the Porter-Cologne Water Quality Control Act clearly differentiates storm water as separate from traditional wastewater discharges. Please see Responses 4.2 and 4.3.

Additionally, the Ocean Plan is the federally approved water quality control plan for the State's ocean waters under the Clean Water Act. The objectives in the Ocean Plan must currently be met by all dischargers (wastewater, storm water and nonpoint sources). SWQPAs are a vital resource for protection of the state's ocean waters.

Comment 23.2

The Legislature intended for MPAs to be protected regionally – the State Water Board's proposed imposition of a statewide scheme for MPAs over the pre-existing regional scheme appears to be contrary to this intent.

Response 23.2

Please see Response 4.6.

Comment 23.3

The scope of the SWQPA-GP designation is unclear from the text of the Ocean Plan Amendment.

Response 23.3

Please see Responses 1.2 and 4.4.

Comment 23.4

The proposed amendment suggests that a large number of existing MPAs are being designated as SWQPA-GP.

Response 23.4

Please see Response 2.4.

Comment 23.5

Provide clarification in the proposed Appendix IV for the governing of the SWQPA nomination process and the SWQPA-GP designation process.

Response 23.5

Please see Response 4.14.

Comment 23.6

The proposed amendment references a number of MPAs that are estuaries, suggesting that these may be subject to future SWQPA-GP designation.

Response 23.6

Please see Response 7.2.

Comment 23.7

The description in Staff Report Sections 4.5 and 4.6 of the seven MPAs in Orange County is incomplete and the maps provide no meaningful information on where they are located.

Response 23.7

Descriptions provided within the Staff Report/SED are intended as background information to provide general facts on the Environmental Setting. A map of the location of the MPAs in Orange County is location in Section 4.4.

Comment 23.8

The Staff Report's "No Action Alternative" has not been given sufficient consideration.

Response 23.8

Staff disagrees. The "No Action Alternative" was given considerable consideration. The proposed amendment and the SWQPA-GP category is a necessary addition to the MMA system under the Porter-Cologne Water Quality Control Act and the Marine Managed Areas Improvement Act to protect the beneficial uses of the unique and valuable marine fauna and flora and associated communities in MPAs. Please see Response 6.7.

Comment 23.9

Clarify the definition of "future" discharges to indicate whether it pertains to new discharges pipes/drains or additional discharges into existing pipes/drains.

Response 23.9

The definition of future discharge pertains to new storm drains or replacement of existing drains to handle more flow.

Comment 23.10

A full Water Code Section 13241 and 13242 analysis should be conducted for the Ocean Plan Amendment.

Response 23.10

Please see Response 12.4.

Comment 23.11

Provision E.5.(c)(4) of the Ocean Plan Amendment requires characterization and assessment of "[e]xisting discharges in SWQPA-GP". To the extent MS4 permittees are required to conduct this monitoring, this represents a significant new (and unfunded) burden on coastal communities.

Response 23.11

Please see Response 6.8.

Comment 23.12

The requirement for universal diversion of dry weather discharges to POTWs has many constraining factors that require analysis.

Response 23.12

Please see Response 1.6.

Comment 23.13

The water quality criteria as listed in Table 1 are overly stringent and difficult to achieve.

Response 23.13

The Ocean Plan is the federally approved water quality control plan for the State's ocean waters under the Clean Water Act and the Porter-Cologne. The water quality objectives in the Ocean Plan, including Table 1, must be met by all dischargers (wastewater, storm water and nonpoint sources). These objectives are based on scientific evidence of a conservative estimate of chronic toxicity, and are essential to the protection of marine life.

Comment 23.14

A full peer review is needed because much of the basis for the proposed Ocean Plan Amendment appears to be scientific in nature.

Response 23.14

Staff disagrees. The proposed amendment does not alter existing or establish new water quality objectives. Establishing new water quality objectives require scientific studies and review. The proposed amendment is based on creating a framework for State Water Quality Protection Areas that will provide an intermediate level of protection between the baseline Ocean Plan and ASBS designation to protect the beneficial uses of species or biological communities for State Marine Parks and State Marine Conservation Areas. The decision to establish this new category of SWQPAs represents a policy decision to create additional implementation tools for protecting water quality and beneficial uses within certain categories of MPA's and is not premised upon specific scientific findings, conclusions or assumptions. No new SWQPAs are being designated at this time. Therefore, peer review is not necessary.

Comment 23.15

The Ocean Plan Amendment should include similar exemption language consistent with the approach for ASBSs.

Response 23.15

The Ocean Plan contains language to grant exemptions from Plan requirements, which is found in Provision J. The Ocean Plan states:

- “The State Water Board may, in compliance with the California Environmental Quality Act, subsequent to a public hearing, and with the concurrence of the Environmental Protection Agency, grant exceptions where the Board determines:
- a. The exception will not compromise protection of ocean* waters for beneficial uses, and,
 - b. The public interest will be served.”

This language will be applicable to future designated SWQPA-GPs, and thus specific language will not be included to this proposed amendment.

Comment 23.16

Provide clarifying language or defining “natural water quality”.

Response 23.16

Please see Response 11.1.

Comment 23.17

Diverting all stormwater from future SWQPA-GP areas, as proposed by the Ocean Plan Amendment, would certainly alter the natural hydrology and salt balance of these coastal areas and should be analyzed.

Response 23.17

The proposed amendment does not aim to divert all storm water to future SWQPA-GP areas. The proposed amendment clearly requires that there will be no increase in nonpoint sources or permitted storm drains into an SWQPA-GP. Existing permitted separate storm sewer system (MS4) discharges and nonpoint discharges may be permitted into an SWQPA, but it is required that they not cause an undesirable alteration in natural ocean water quality.

Comment 23.18

Orange County Public Works thinks the CEQA analysis provided is not extensive enough.

Response 23.18

Please see Response 4.12.

Comment 23.19

Orange County Public Works thinks the SED lacks a discussion of mitigation measures.

Response 23.19

The proposed amendment only provides the framework for an SWQPA-GP. The proposed amendment does not designate any areas as an SWQPA-GP. Mitigation measures will occur on an SWQPA-GP-by-SWQPA-GP basis, and thus the draft SED is unable to provide specific discussion of mitigation measures.

Comment 23.20

Orange County Public Works thinks the SED lacks identification or discussion of compliance methods.

Response 23.20

The proposed amendment only provides the framework for an SWQPA-GP. The proposed amendment does not designate any new SWQPA-GPs. Compliance methods will occur on an SWQPA-GP-by-SWQPA-GP basis, and thus the draft SED is unable to provide specific discussion of compliance methods.

Comment 23.21

Orange County Public Works thinks the Ocean Plan Amendment does not meet California's Administrative Procedure Act's "necessity" and "clarity" standards.

Response 23.21

Staff disagrees. The proposed amendment is both clear and necessary to fulfill the State Water Board's goals and priorities in fulfilling its statutory mandates. State Water Board Resolution 2010-0057 provided specific direction to staff for developing a strategy for designating SWQPAs. The proposed project was identified as a very high priority issue in the 2011-2013 Triennial Review Work Plan. The proposed amendment is necessary to protect the beneficial uses of species or biological communities for State Marine Parks and State Marine

Conservation Areas with a cohesive and consistent statewide framework. To further clarity, staff is taking into consideration public comments and revising portions of the proposed amendment.

Letter 24: From James Colston of Orange County Sanitation District

Comment 24.1

The Orange County Sanitation District supports the concept of the proposed category SWQPA-GP as it provides a good compromise in meeting the water quality goals of the State and recognize that ASBS designation would cause severe financial impacts to the public in areas where public infrastructure currently exist.

Response 24.1

Staff appreciates the support from Orange County Sanitation District on the proposed category SWQPA-GP to continue to protect the beneficial uses of the ocean waters of the State.

Comments 24.2

The Orange County Sanitation District requests that an economic feasibility study be conducted as part of each future nomination of an SWQPA category.

Response 24.2

The procedures for nomination and designation process for a new SWQPA (ASBS or GP) are outlined in Appendix IV. This is a public process that includes a CEQA analysis with an economic component, as well as a public hearing to receive testimony on the designation.

Comments 24.3

The proposed amendment does not provide guidelines on how to distinguish between the two SWQPA categories. Orange County Sanitation District requests that each category to be defined and provide specific guidelines for how the categories should be applied. They recommend creating a flow diagram explaining how all the MMAs are regulated and how they can overlap.

Response 24.3

The proposed amendment and SED provide clear descriptions of differentiation between the two SWQPA categories. Staff does agree that a flow chart and public education materials may be useful. This suggestion may be further considered based on staff resource availability.

Comments 24.4

The Orange County Sanitation District is concerned that the proposed language requires all dry weather flow be diverted into the sanitary sewer system where capacity and infrastructure exist.

Response 24.4

Please see Response 1.6.

Public Workshop – August 22, 2012
 Comment Letters Received by noon on August 31, 2012

Letter No.	Association	Representative
1	California Association of Sanitation Agencies Tri-TAC Southern California Alliance of POTWs	Roberta Larsen Jacqueline Kepke John Pastore
2	California Coastkeeper Alliance Heal the Bay Natural Resources Defense Council Surfrider Foundation Ocean Conservancy Orange County Coastkeeper Santa Barbara Channelkeeper	Sara Aminzadeh Sarah Abramson Sikich Karen Garrison Joe Geever Kaitlin Gaffney Garry Brown Kira Redmond
3	California Council for Environmental and Economic Balance	Robert Lucas Gerald Secundy
4	California Stormwater Quality Association	Richard Boon
5	City of Dana Point	Brad Fowler
6	City of San Diego, Transportation & Storm Water Department	Kris McFadden
7	County Sanitation Districts of Los Angeles County	Grace Robinson Chan
8	General Public	Joyce Dillard
9	Orange County Public Works	Mary Anne Skorpanich
10	Sempra Energy San Diego Gas & Electric Company Southern California Gas Company	Tamara Rasberry
11	South Orange County Wastewater Authority	Tom Rosales

Editorial Note: As stated in the July 31, 2012 Notice of Public Workshop, written comments must be limited to only changes from the previously circulated draft SED and amendment. Staff will only respond to those comments addressing changes from the previous draft SED and amendment.

Letter 1: From Roberta Larson of California Association of Sanitation Agencies, Terri Mitchell of Tri-TAC, and John Pastore Southern California Alliance of POTWs

Comment 1.1

Commenters request the removal of the word “sole” from Provision E.2, which describes the basis of designation of SWQPA-GPs within the presence of State Marine Parks and State Marine Conservation Areas.

Response 1.1

Provision E.2, specifies that State Marine Parks and State Marine Conservation Areas cannot be the only driver for new permit conditions for existing municipal point source discharges. Section E.5.(a)(1) further states that SWQPA-GPs should not be designated over existing wastewater outfalls or encroach upon the zone of initial dilution for such existing outfalls.

Staff recognizes that MPAs are designated to protect or conserve marine life and habitat and provide natural resource protection. Water quality will play a role in the success of California’s MPA system.

The Ocean Plan is clear that there shall not be degradation of marine life, habitat, and/or water quality associated with waste discharges. This is true for all near coastal ocean waters, regardless of whether an MPA is present. The Regional Water Boards implement the Ocean Plan and its protections through NPDES permits for wastewater discharges. If sound scientific information becomes available demonstrating that discharges are causing or contributing to the degradation of marine life, then NPDES permit terms are changed to provide the necessary protections within the context of the Ocean Plan. In certain cases, based on new information, the objectives, effluent limitations and prohibitions in the Ocean Plan are also subject to amendment.

Again, it is important to keep in mind that this process is required under state and federal law to protect the entire near coastal ocean, not just in waters designated as MPAs. Marine Parks and Conservation Areas that are not also designated as ASBS are afforded the same strict protections as other ocean areas in California. The only places where waste discharges are prohibited are in ASBS, and natural water quality must be maintained there, regardless of whether those ASBS are co-located with an MPA. The ecological performance of a Marine Park and Conservation Area (not co-located with an ASBS) is not intended to be a reason for new conditions to be placed on an existing POTW waste water discharger. However, new conditions may be placed on that outfall if there is sound scientific evidence, such as routine exceedance of water quality objectives, that the discharge is degrading marine life in our near coastal ocean waters.

Comment 1.2

For clarity and consistency with Resolution 2010-0057, the commenters request the language of ‘wastewater discharge’ in Provision E.5.(a)(1) to be changed to ‘wastewater outfall’.

Response 1.2

Staff agrees and accepts the suggested language change. ‘Wastewater outfall’ aligns most closely with the intention of Resolution 2010-0057.

Comment 1.3

Commenters request a modification the definition of SWQPA-GP to be more consistent with the Marine Managed Areas Improvement Act from “protect or conserve marine life and habitat” to “protect marine species or biological communities”.

Response 1.3

Staff agrees and accepts the suggested language modification of the definition for SWQPA-GP. One purpose of this amendment is to provide consistency with the Marine Managed Areas Improvement Act, and modification of the definition will achieve that objective.

Comment 1.4

Typographical error present in Section 4.4. Publicly-owned treatment works are referred to as “POWTs” and should be “POTWs”.

Response 1.4

Staff appreciates and accepts the typographical comment.

Letter 2: From Kaitlin Gaffney of Ocean Conservancy, Sarah Sikich of Heal the Bay, Sara Aminzadeh of California Coastkeeper Alliance, Joe Geever of Surfrider Foundation, Karen Garrison of NRDC, Kira Redmond of Santa Barbara Channelkeeper, and Garry Brown of Orange County Coastkeeper**Comment 2.1**

Comments request that the amendment retains the “sole basis” language in Provision 2.

Response 2.1

Provision 2, as written, specifies that State Marine Parks and State Marine Conservation Areas cannot be the only driver for new limitations, substantive conditions or prohibitions on existing municipal point source wastewater discharge outfalls.

Staff recognizes that MPAs are designated to protect or conserve marine life and habitat and provide natural resource protection. Water quality plays a role in the success of California’s MPA system. While MPA designation should not be the sole trigger for additional regulation, if there is degradation in marine life, habitat, and/or water quality then beneficial uses must be protected regardless of whether a MPA is present. Additionally, see Response 1.1.

Comment 2.2

Commenters oppose the removal of “other unique and sensitive areas” from the definition of areas that can elicit water quality protection under the SWQPA-GP designation.

Response 2.2

While staff does acknowledge that California has many biologically and ecologically important areas that are not currently designated as MPAs, the intention is that SWQPA-GP will be co-located only with State Marine Park and State Marine Conservation Areas. Areas not designated as a State Marine Park or State Marine Conservation Areas are still protected under the Ocean Plan. Furthermore, the State Board may also designate certain Marine Reserves as ASBS if sufficient information is available to support such a designation, according to the established designation procedure in the Ocean Plan.

Comment 2.3

Commenters request that staff provided a description and definition for “in the vicinity” in Provision 5.(a)(3).

Response 2.3

Staff does not intend to prescribe a specific numeric distance for “in the vicinity”. This language was originally present in Resolution 2010-0057. Broadly, “in the vicinity” is intended to be farther than the zone of initial dilution of an outfall and within the range of detectability of wastewater constituents. Generally this must be determined on a case-by-case basis, depending on variables such as oceanographic currents and waste water characteristics.

Comment 2.4

Commenters request the removal of Provision E.5.(a)(4), which states, “Regulatory requirements for discharges from existing treated municipal wastewater outfalls shall be derived from the California Ocean Plan”. This statement is argued to be redundant since this is an Ocean Plan amendment.

Response 2.4

Staff agrees Provision E.5.(a)(4) is redundant, since discharges from existing treated municipal wastewater outfalls to the ocean are regulated under the Ocean Plan. The provision was changed to specify applicable chapters of the Ocean Plan. The Provision language was originally present in the Resolution 2010-0057, which was not an Ocean Plan amendment.

Comment 2.5

Commenters request the re-inclusion of the trash prohibition to Provision E.5.(c).

Response 2.5

Staff recognizes that the presence of trash is an impact to ocean water quality and marine life. Currently, trash is a State Water Board priority issue, and trash controls will be addressed through amendments to statewide water quality control plans.

Comment 2.6

Commenters request inclusion of a provision to address the potential cumulative impacts associated with new seawater intakes between MPAs.

Response 2.6

Staff appreciates the support for the implementation provision for seawater intakes. Staff does recognize the potential for cumulative impacts of marine life mortality associated with entrainment and impingement from seawater intakes between MPAs. However, addressing cumulative impacts is beyond the scope of this amendment.

Letter 3: From Robert Lucas and Gerald Secundy of California Council for Environmental and Economic Balance**Comment 3.1**

Commenters request that new language be included to further address intermittent, short-term dewatering discharges from underground structures pursuant NPDES permits to Provision E.3 and E.5.(c).

Response 3.1

The language provided in the July 25, 2012 version of the amendment as Provision E.5.(a)(5) already included intermittent, short-term dewatering discharges from underground structures pursuant NPDES permits. Similar language is concurrently present in the ASBS General Exception and Special Protections adopted on March 20, 2012. However, the language will be moved under Provision E.5(c), for permitted separate storm sewer system (MS4) and nonpoint source discharges, since utility vault discharges are permitted point source discharges into municipal storm drain systems.

Comment 3.2

Commenters note that “natural water quality” is not the standard set by statute for State Marine Reserves, State Marine Parks, or State Marine Conservation Areas, and thus should not be part of the definition for SWQPA-GP.

Response 3.2

Staff disagrees. The Public Resources Code defines an SWQPA as “*a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality...*” (Pub. Res. Code sec. 36700 subd. (f))The State Water Board has the authority to designate SWQPAs anywhere in the near coastal ocean, including over MPAs. Designation of an SWQPA will occur through a separate public process.

Letter 4: From Richard Boon of California Stormwater Quality Association

Comment 4.1

Commenters request that the Public Process section of the SED indicate whether and how the previous comments were considered since no Response to Comments was circulated.

Response 4.1

Staff appreciates the participation of organizations and general public in the two comment periods. All comments received were reviewed by staff. Consideration of the comments was conducted based on whether the comments aligned with the State Water Board’s intention and objective of the amendment. Response to Comments from the April 16 and August 31, 2012 comment period deadlines were combined into one document, and are being released prior to the Adoption Hearing.

Comment 4.2

Commenters argue that MPAs provide no environmental and economic benefits.

Response 4.2

There is a growing body of international evidence of the environmental and economic benefits from MPA designation. The National Oceanic and Atmospheric Administration (NOAA) recognizes that MPAs provide natural resource protection, historical and cultural resource protection, and social and economic benefits. These benefits are directly applicable to California’s network of MMAs.

Comment 4.3

Commenters assert that for trash prohibitions new regulation requiring structural changes cannot be implemented immediately and will require a phase-in period.

Response 4.3

Staff recognizes that the presence of trash is an impact to ocean water quality and marine life. Currently, trash is a State Water Board priority issue, and trash controls will be addressed separately through amendments to statewide water quality control plans, including the Ocean Plan, in a future public process. The proposed implementation for trash controls will include compliance schedules.

Comment 4.4

Commenters are requesting clarification on the definition of “undesirable alteration” between Provision E.5.(c)(1) for intermittent (e.g. wet weather discharges) and the new language for NPDES permitted non-storm water discharges to an MS4 in Provision E.5.(a)(5). Commenters state that, “Non-stormwater discharges to MS4s are typically groundwater seepage and are often permanent discharges. The definition of “*undesirable alteration*” quoted above pertains to intermittent discharges. Consequently, it is unclear what definition of undesirable alteration will pertain to these permanent discharges of non-stormwater.” Commenters are concerned about meeting the Table 1 [Table B] instantaneous maximum concentrations for chemical constituents in the receiving water for intermittent discharges.

Response 4.4

Staff agrees that “undesirable alterations of natural water quality” is not defined for NPDES authorized non-storm water discharges to an MS4. The proposed language for NPDES permitted non-storm water discharges to an MS4 will be moved from the Provision E.5.(a) inserted under Provision E.5.(c) (implementation provisions for permitted separate storm sewer system discharges and nonpoint source discharges). This move provides clarification for the definition of “undesirable alteration” for NPDES permitted non-storm water discharges.

Additionally, the Ocean Plan is the federally approved water quality control plan for the State’s ocean waters under the Clean Water Act and the Porter-Cologne. The water quality objectives in the Ocean Plan, including Table 1, must be met by all dischargers (wastewater, storm water and nonpoint sources). These objectives are based on scientific evidence of a conservative estimate of chronic toxicity, and are essential to the protection of marine life.

Letter 5: From Brad Fowler of City of Dana Point

Comment 5.1

Commenter requests that sampling locations should be defined by reference to the existing EPA mixing zone standard per 40 CFR 125.121 to ensure consistent and uniform sampling results and provide the requisite compliance measure.

Response 5.1

The proposed amendments do specify that monitoring will occur in the receiving water, and not in the runoff. Therefore compliance will be determined in the receiving water. Designation of an SWQPA-GP will occur through a separate public process. Since each possible SWQPA-GP location is unique, site-specific sampling locations will be specified within the applicable permits. Storm water discharges do not get a dilution credit since they are not generally issued effluent limits. Under the Ocean Plan the calculation for effluent limits includes a dilution factor. However, this does not apply in this case, since samples will be collected in the ocean receiving water rather than in the runoff.

Comment 5.2

Commenter requests that language to accommodate natural source exclusion be added to amendment language.

Response 5.2

Staff agrees with the addition of language for natural source exclusion. The proposed amendment was revised to include similar language as the ASBS General Exception and Special Protections adopted on March 20, 2012 to Provision E.5.(c) to allow discharges essential for emergency response purposes, structural stability, and slope stability, and which occur naturally.

Letter 6: From Kris McFadden from City of San Diego, Transportation & Storm Water Department

The comments in the letter supplied to this amendment were directed to the Ocean Plan amendment for Model Monitoring. The comments were addressed in the Response to Comments for the Model Monitoring amendment.

Letter 7: From Grace Chan of County Sanitation Districts of Los Angeles County

Comment 7.1

Commenters request the removal of the word “sole” from Provision E.2, which describes the basis of designation of SWQPA-GP with presence of State Marine Parks and State Marine Conservation Areas.

Response 7.1

Please see Response 1.1.

Letter 8: From Joyce Dillard, General Public

Comment 8.1

Commenter inquires how ‘natural water quality’ is determined and monitored.

Response 8.1

State Water Board staff’s efforts are underway to better define natural water quality through reference sites. An ASBS natural water quality committee was established under State Water Board Resolution 2004-52. The committee concluded that it is not practical to identify a unique seawater composition as exhibiting natural water quality. However, it should be possible to define a reference area or areas that approximate natural water quality for an SWQPA and any detectable human influence on the water quality must not hinder the ability of marine life to respond to natural cycles and processes. For more information on the findings of the committee see: http://www.waterboards.ca.gov/water_issues/programs/ocean/asbs_nwqcommittee.shtml

Letter 9: From Mary Anne Skorpanich of Orange County Public Works

Comment 9.1

Commenter requests that language to accommodate natural source exclusion be added to amendment language.

Response 9.1

Please see Response 5.2.

Letter 10: From Tamara Rasberry of Sempra Energy, San Diego Gas & Electric Company, and Southern California Gas Company**Comment 10.1**

Commenters request that new language be included to further address intermittent, short term dewatering discharges from underground structures pursuant NPDES permits to Provision E.3 and E.5.(c).

Response 10.1

Please see Response 3.1.

Comment 10.2

Commenters note that “natural water quality” is not the standard set by statute for State Marine, Reserves, State Marine Parks, or State Marine Conservation Areas, and thus should not be part of the definition for SWQPA-GP.

Response 10.2

Please see Response 3.2.

Letter 11: From Tom Rosales of South Orange County Wastewater Authority**Comment 11.1**

Commenters argue that economic benefits of concurrent MPA and SWQPA designation is not supported by cost benefit analysis.

Response 11.1

Please see Response 4.2. Additionally, under state law staff does not perform a cost benefit assessment.

Comment 11.2

Commenters request the removal of the word “sole” from Provision E.2, which describes the basis of designation of SWQPA-GP within the presence of State Marine Parks and State Marine Conservation Areas.

Response 11.1

Please see Response 1.1.