



**Marine Program Office**

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[www.defenders.org](http://www.defenders.org) | [www.saveseaotters.org](http://www.saveseaotters.org)

March 15, 2010

Constance Anderson  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
[csanderson@waterboards.ca.gov](mailto:csanderson@waterboards.ca.gov)

*Via email*

Re: *Notice of Preparation of a Statewide Program EIR for a General Exception to the California Ocean Plan for Discharges into ASBSs*

Dear Ms. Anderson,

Defenders of Wildlife (“Defenders”), on behalf of over 1 million members and activists nationwide, including 130,000 members and activists in California, are writing to comment on the Notice of Preparation (“NOP”) of an Environmental Impact Report (“EIR”) and attached Initial Study (“IS”) for a General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Discharges (the Exception) into Areas of Special Biological Significance (“ASBS”). Defenders has advocated for the implementation of the decades-old Ocean Plan discharge prohibition for years, and were active in the process to address the ongoing discharges to ASBSs.

After a significant investment of staff time by various non-profit organizations as well as at the State Water Resources Control Board (“SWRCB”), we are disappointed and concerned to review the NOP, its attached IS, and the revised Exception. Rather than implement the discharge prohibition, or at least ensure its implementation within a fixed time frame, the proposed Exception instead eviscerates the prohibition.

California’s ASBSs are the 34 jewels of the state’s world-renowned coastline. These marine waters were given special protection status decades ago to protect the unique and sensitive biological species and communities found in these areas. Some contain extremely high biodiversity, some contain excellent examples of particular ecosystem types, and some contain exceptionally rare or threatened species; but all of them are special. The Ocean Plan defines “ASBSs” as “those areas designated by the SWRCB as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.” Protecting these areas is so critical to the people of California that “preservation and enhancement” of ASBSs is a beneficial use explicitly listed in the Ocean Plan, as well as in all of the coastal regional basin plans. Protection of this beneficial use and prevention of alteration of natural water quality is accomplished in the only conceivable way, given the definition of “ASBS” – through an outright prohibition on discharge of waste. This provision of the Ocean Plan is abundantly clear: “Waste shall not be discharged to areas designated as being of special biological significance.” This prohibition has existed in its current form for over twenty years and should be strictly adhered to.

Over twenty years ago, the SWRCB adopted a pollution discharge prohibition to protect these resources, which by definition thrive only in natural water quality. Unfortunately, the clear prohibition on pollution into these biologically important areas has been largely ignored over the years, and there are now more than 1,600 illegal discharges into ASBSs statewide. As a result, some of the areas have become so polluted that they cannot even be safely used for wading, let alone, as habitats for sensitive species, like the federally threatened southern sea otter. The Exception addresses 28 broad categories of discharges into 26 of the 34 ASBSs, some of which (Año Nuevo, Point Lobos, Julia Pfeiffer Burns, Pacific Grove, and San Nicolas Island) overlap with the range of the southern sea otter; and there are serious concerns about impacts from the land to sea on sea otter survival and recovery.

Sea otters are the “canary in the coalmine” playing the role of indicator species for nearshore ecosystem health. In the last decade it has come to the attention of the research and conservation community that 40% to 50% of sea otters are dying from infectious or parasitic diseases, many of which have land-based origins. The Monterey Bay Area and Morro Bay are two particular hot spots for sea otter disease. Many of these diseases appear to be newly introduced and are related to human activities and pollution that originate on land.

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In a heavily agricultural area such as Monterey Bay, organochlorine compounds, some of the breakdown products of formerly used pesticides such as DDT, still persist in the environment and enter into the marine ecosystem in run-off. Other currently used pesticides may pose as yet unrecognized serious threats to sea otters. The organochlorine compounds build up, or bioaccumulate, in the organs of sea otters' prey such as mussels, clams and other shellfish. When sea otters eat these shellfish, the deadly chemicals concentrate in their systems, and that sometimes results in debilitation and reproductive failure. Shellfish appear on restaurant menus, so the bioaccumulation of chemicals in marine invertebrates could potentially become harmful to humans.

In addition to agricultural run-off, pollution such as polychlorinated biphenyl (otherwise known as PCBs), heavy metals, and other contaminants enter into the marine ecosystem through storm sewer discharge and industrial and municipal discharges. And these forms of discharge are the issue with regard to the Exception.

So while the focus in our comments for impacts to biological resources is on sea otters, they are the bellwether for the entire nearshore ecosystem in California, which contains all of the ASBSs. If sea otter health is declining, so is the health of the nearshore ecosystem. In the IS, it is noteworthy that on page 10 under "Biological Resources", five of the six categories have been marked as having "potentially a significant impact" from the project and the IS concludes that the "general exception project has the potential to impact species, habitat, and sensitive natural communities within each of the 26 ASBS identified in this general exception, if existing inadequate controls currently in force are allowed to continue".

The CA Ocean Plan prohibits discharges into ASBS's, period. However, although we recognize that SWRCB staff is well-intentioned, a general exception for illegal dischargers is fundamentally inconsistent with the waste discharge prohibition in the Ocean Plan.

The Exception appears to reflect an unwillingness by SWRCB to simply enforce long-standing regulatory provisions that protect the few dozen areas along the California coast that the SWRCB itself has determined are California's coastal "ecogems." This approach reinforces the worst perceptions of the State Board institutionally. The draft policy would reward decades of non-compliance, and even encourage future non-compliance with other State Board directives.

Defenders, along with many other organizations, have collectively spent decades advocating for what, ironically, has been law for the same length of time – a straightforward discharge prohibition. Disappointingly, rather than celebrating the renewed health of ASBSs in the face of enforcement of this prohibition, we find ourselves fighting regular attempts to circumvent this prohibition by both the regulated community and the state agency charged with protecting the ASBSs.

Defenders concurs with the request stated in the March 15, 2010 comments prepared by the California Coastkeeper Alliance, "that staff abandon the Exception process, and instead issue enforcement orders to the Exception applicants, in the form of cease and desist orders or cleanup and abatement orders providing for compliance schedules." As noted above, these orders could be issued in a matter of months, can contain the same substantive requirements as those in the proposed Exception, and would begin the process of bringing dischargers into compliance now. These special places deserve implementation of the law".

Thank you for your careful attention to these comments and we are also incorporating by reference the March 15, 2010 comments prepared by the California Coastkeeper Alliance.

Sincerely,

Jim Curland  
Marine Program Associate

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