



March 15, 2010

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

**RE: Notice of Preparation of a Statewide Program EIR for a General Exception to the California Ocean Plan Waste Discharge Prohibition for Discharges into ASBS**

Dear Ms. Anderson,

Orange County Coastkeeper (“Coastkeeper”) is an environmental organization with the mission to preserve, protect, and restore the watersheds and coastal environment of Orange County. After careful review of the contents of the Notice of Preparation (NOP) and its Initial Study (IS), Coastkeeper is concerned that the proposed statewide General Exception is an alarming retreat from California’s strict and long-established environmental policy of prohibiting waste discharge into an Area of Special Biological Significance (ASBS). The NOP and IS identify and directly affect ASBSs in Orange County, which include the Irvine Coast Marine Life Refuge, the Heisler Park Ecological Reserve, and the Robert E. Badham State Marine Park.

**AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE HAVE A HEIGHTENED STANDARD OF PROTECTION**

California designated 34 regions along the coast as ASBS to preserve biologically unique and sensitive aquatic environments. The California Ocean Plan (Ocean Plan) defines ASBS as “areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.”<sup>1</sup> Areas are designated ASBS because they contain valuable but fragile marine ecosystems that require a heightened standard of protection in order to restore and maintain these areas for future generations.

The Ocean Plan provides stringent protection through a discharge prohibition<sup>2</sup>, which states, “Waste shall not be discharged to areas designated as being of special biological significance. Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas.”<sup>3</sup> This is an absolute prohibition on waste discharge into ASBSs. The proposed statewide General Exception undermines the purpose of the Ocean Plan which seeks to prevent waste discharge into fragile

---

<sup>1</sup> State Water Resources Control Board, “California Ocean Plan” (2005) at Appendix I (Ocean Plan).

<sup>2</sup> Ocean Plan at III.H.2.

<sup>3</sup> Ocean Plan at III.E.1.

marine areas. Additionally, a General Exception will weaken the ASBS Discharge Prohibition which has been established by the Ocean Plan for over three decades. Approval of this General Exception would be retrogression in California's Ocean Plan and will set a detrimental precedence for future state environmental policy.

#### THE PROPOSED EXCEPTION FAILS TO MEET THE OCEAN PLAN EXCEPTION REQUIREMENTS

The State Water Board has the authority to grant ASBS Discharge Prohibition Exceptions under the Ocean Plan, provided procedural and substantive conditions are met.

1. 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.
2. All exceptions issued by the State Water Board and in effect at the time of the Triennial Review will be reviewed at that time. If there is sufficient cause to re-open or revoke any exception, the State Water Board may direct staff to prepare a report and to schedule a public hearing. If after the public hearing the State Water Board decides to re-open, revoke, or re-issue a particular exception, it may do so at that time.<sup>4</sup>

The proposed General Exception does not meet the Ocean Plan Exception conditions.

First, there is no evidence to support that the General Exception will not compromise protection of ocean waters for beneficial uses. The IS states that the proposed Exception "will allow the continued discharge of wastes from various origins including storm water runoff into ASBS," that "existing ocean water quality conditions within ASBS have had measured concentrations of constituents which exceed the Table B water quality objectives of the Ocean Plan," and that "exceedances of the Table B Ocean Plan water quality objectives were also found in the storm water runoff of some of the applicants."<sup>5</sup> However, the IS lacks documentation of specific data to ensure that allowing discharges by the 27 applicants to continue will not compromise ocean waters in each affected ASBS.

Second, a General Exception to the ASBS Discharge Prohibition will not serve the public interest. Ocean Plan ASBS Exceptions have been allowed for activities with "invaluable education and research benefits," and other factors to consider include "environmental damage that would occur if the discharge were moved" or "discharges associated with defense activities."<sup>6</sup> Here, there are no educational or research benefits or discharges due to defense activities that would serve the public interest by approving the General Exception. Also, there is no evidentiary data to prove that moving any of the existing discharges would cause greater

---

<sup>4</sup> Ocean Plan at III.I.

<sup>5</sup> NOP/IS at p. 14.

<sup>6</sup> Sheila Vassey, *Ocean Plan ASBS Exceptions*, State Water Board staff attorney Presentation (2005), at p. 2 (available at [http://www.swrcb.ca.gov/water\\_issues/programs/ocean/docs/asbs/instruct\\_asbs\\_opexceptions.pdf](http://www.swrcb.ca.gov/water_issues/programs/ocean/docs/asbs/instruct_asbs_opexceptions.pdf)).

environmental damage than leaving it. Therefore, the General Exception sought would not serve the public interest.

Finally, the General Exception Draft Compliance Schedule allows each applicant an additional four years<sup>7</sup> to comply with the Ocean Plan ASBS Discharge Prohibition which has been in effect for over 30 years. Moreover, the General Exception's proposed four year timeline exceeds the Ocean Plan's Triennial Review of all existing exceptions in effect and would avoid timely and effective evaluation of the Exception.

#### COASTKEEPER ADVOCATES ENFORCEMENT OF THE OCEAN PLAN ASBS DISCHARGE PROHIBITION

Coastkeeper advocated for the prosecution of illegal discharges into ASBSs in Orange County in the fall of 2000. In November of that year, the Santa Ana Regional Board issued a cease-and-desist order (CDO), Order No. 00-87, to the Irvine Company, the California Department of Parks and Recreations and the California Department of Transportation.<sup>8</sup>

Now, more than ever, Coastkeeper continues to avidly promote the enforcement of the Ocean Plan Prohibition of Discharges into ASBSs. CDOs must continue to be issued, and there should be more instances of prosecution of illegal discharges into ASBSs across California instead of a statewide General Exception to the Ocean Plan ASBS Discharge Prohibition.

#### CONCLUSION

Coastkeeper would like to thank you for the opportunity to comment on the NOP of a Statewide Program EIR for a General Exception to the Ocean Plan Prohibition for Discharges into ASBS.

We request that the State Water Board not approve a General Exception to the Ocean Plan ASBS Discharge Prohibition because of its detrimental effect on California's water and coastal environmental policy as well the actual marine zones at stake. The quality of our state's waters, especially those designated Areas of Special Biological Significance, is of critical importance to Coastkeeper, and we look forward to continued involvement with the State Water Board on this matter.

Sincerely,



Garry Brown  
Executive Director  
Orange County Coastkeeper

---

<sup>7</sup> NOP/Attachment A, A.3.e at p. B-5.

<sup>8</sup> John J. Lorman, "California's Ban on Waste Discharges into Areas of Biological Significance," *Natural Resources and Environment* (2005), Volume 20, Issue 2, at p. 29.