



March 15, 2010

*Via e-mail to [csanderson@waterboards.ca.gov](mailto:csanderson@waterboards.ca.gov)*

Constance Anderson  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

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:

San Diego Coastkeeper respectfully submits the following comments on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) and attached Initial Study for a General Exception to the California Ocean Plan Waste Discharge Prohibition for Selected Discharges (the Exception) into Areas of Special Biological Significance (ASBS). San Diego Coastkeeper has advocated for enforcement of the decades-old Ocean Plan discharge prohibition for years, and has been actively involved in with Scripps Institute of Oceanography (Scripps), which currently enjoys an exception to the Ocean Plan.<sup>1</sup>

Because Coastkeeper has closely followed Scripps since it received its Ocean Plan exception, Coastkeeper is uniquely situated to comment on how lessons learned from Scripps should inform the process for dealing with other dischargers into Areas of Special Biological Significance.

As part of its Ocean Plan exception, Scripps has undertaken arguably the most extensive water quality monitoring program in the region. Despite this extensive monitoring, the data is still insufficient to define “natural water quality” or to show that the La Jolla ASBS is not negatively impacted.

---

<sup>1</sup> The San Diego Regional Water Quality Control Board first issued Scripps a National Pollutant Discharge Elimination System permit in 1974, approximately six months after San Diego Marine Life Refuge ASBS and the San Diego–La Jolla Ecological Reserve were designated an ASBS. The Ocean Plan in effect at that time prohibited discharges into an ASBS that could alter natural water quality. When the Regional Board issued the 1974 permit, it found that the Scripps discharge would not alter natural water quality conditions. The permit was re-issued in 1979, 1984, 1994, and 1999. In 2004, the State Board granted Scripps an exception to the Ocean Plan prohibition of discharge into the ASBS.

The ASBS Natural Water Quality Committee agreed that Scripps’ “work should provide guidance for assessing impacts to water quality in any ASBS in the State.”<sup>2</sup> But even after reviewing Scripps’ monitoring data, the ASBS Natural Water Quality Committee was still revisiting its definition of natural water quality.<sup>3</sup>

A pilot study, conducted by Pete Raimondi at UC Santa Cruz and funded by delinquent ASBS stakeholders, was also inconclusive. The study reviewed the intertidal biological data submitted with one-time ASBS applications. While the study found a difference between ASBS discharge sites and a reference site in 3 of the 4 studies that met the evaluation criteria, the studies could not decipher if the changes were the result of the ASBS discharge itself.<sup>4</sup>

In light of the inability of Scripps’ monitoring program to shed light on natural water quality and the impact of discharges into the ASBS on water quality, it would be a serious mistake for the State Board to move forward with granting a blanket exception to all ASBS dischargers. Exceptions should only be granted in narrow circumstances where the applicant has clearly demonstrated:

- (1) The exception will not compromise protection of ocean waters for beneficial uses; and
- (2) The public interest will be served.<sup>5</sup>

Even with Scripps’ extensive monitoring, and the work of the Natural Water Quality Committee, the data is still inconclusive, and “natural water quality” has yet to be defined. Nonetheless, the State Board is moving forward to issue a blanket exception to 28 applicants based on sampling from one storm event during the 2005-06 rainy season.<sup>6</sup> The lack of available data precludes any certainty that beneficial uses are or could be met through such exceptions. Moreover, Scripps’ discharges to the ASBS are largely composed of aquaria effluent, while most of the exceptions currently being considered are for storm water discharges from municipal dischargers.<sup>7</sup> These municipalities are thus currently in violation of their Municipal Separate Storm Sewer System NPDES Permits, and the proposed exceptions would amount to no more than post-hoc rationalization for allowance of continued violations.

Because the State Board has chosen to study Scripps as a model, which has to date proven inconclusive, the current approach to protecting ASBS around the state is woefully inadequate from a practical stand point and clearly illegal pursuant to the Ocean Plan and

---

<sup>2</sup> See ASBS Natural Water Quality Committee Meeting Notes, Oct. 25, 2005, *available at* [http://www.swrcb.ca.gov/water\\_issues/programs/ocean/docs/asbs/asbsnwqc/minutes2005oct25.pdf](http://www.swrcb.ca.gov/water_issues/programs/ocean/docs/asbs/asbsnwqc/minutes2005oct25.pdf).

<sup>3</sup> See ASBS Natural Water Quality Committee Meeting Notes, Aug. 25, 2009 *available at* [http://www.swrcb.ca.gov/water\\_issues/programs/ocean/docs/asbs/asbsnwqc/mins082509.pdf](http://www.swrcb.ca.gov/water_issues/programs/ocean/docs/asbs/asbsnwqc/mins082509.pdf).

<sup>4</sup> See ASBS Natural Water Quality Committee Meeting Notes, Aug. 25, 2009 *available at* [http://www.swrcb.ca.gov/water\\_issues/programs/ocean/docs/asbs/asbsnwqc/mins082509.pdf](http://www.swrcb.ca.gov/water_issues/programs/ocean/docs/asbs/asbsnwqc/mins082509.pdf).

<sup>5</sup> Ocean Plan section I.1.a. and b.

<sup>6</sup> See ASBS Ocean Plan Exception Process, Pre-exception Monitoring FAQ’s, *available at* [http://www.swrcb.ca.gov/water\\_issues/programs/ocean/docs/asbs/preexcepmon\\_faqs.pdf](http://www.swrcb.ca.gov/water_issues/programs/ocean/docs/asbs/preexcepmon_faqs.pdf).

<sup>7</sup> See Scripps’ August 5, 2009 Attachment 1: Report of Waste Discharge and SWRCB Form 200 Supplemental Information

Thermal Plan.<sup>8</sup> More detailed comments on the severely flawed approach the State Board has taken are provided in the California Coastkeeper Alliance letter, which Coastkeeper urges the State Board to carefully consider.

Coastkeeper strongly urges the State Board to abandon the blanket exception process and instead enforce the ASBS discharge prohibition as written.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Reznik', with a long horizontal flourish extending to the right.

Bruce Reznik  
Executive Director

---

<sup>8</sup> See Public Resources Code Sections 36700, 36710 stating ASBS are state water quality protection areas requiring “special protection” under the Ocean Plan and Thermal Plan.