

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF WATER QUALITY
OCTOBER 18, 2011**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION APPROVING AN EXCEPTION TO THE CALIFORNIA OCEAN PLAN FOR THE MONTEREY BAY AQUARIUM DISCHARGE INTO THE PACIFIC GROVE AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE, INCLUDING SPECIAL PROTECTIONS TO PROTECT BENEFICIAL USES, AND ADOPTING A MITIGATED NEGATIVE DECLARATION

DISCUSSION

On March 21, 1974, the State Water Resources Control Board (State Water Board), in [Resolution No. 74-28](#), designated 31 Areas of Special Biological Significance (ASBS). Subsequently, the State Water Board designated three additional ASBS for a total of 34. Among the designated ASBS is the Pacific Grove Marine Gardens Fish Refuge and Hopkins Marine Life Refuge ASBS. The name of this ASBS was changed by the State Water Board in April 2005 to the Pacific Grove ASBS ([Resolution No. 2005-0035](#)).

According to the Public Resources Code, all ASBS are designated as a subset of state water quality protection areas and require special protection as determined by the State Water Board pursuant to the Ocean Plan, and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (Thermal Plan). In state water quality protection areas, waste discharges must be prohibited or limited by special conditions, in accordance with the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq., and implementing regulations, including the California Ocean Plan (Ocean Plan) and Thermal Plan.

Since 1983, the Ocean Plan has prohibited waste discharges to ASBS. Similar to previous versions of the Ocean Plan, the 2009 Ocean Plan 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."

Section III (J)(1) of the 2009 Ocean Plan states: "The State 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."

The Monterey Bay Aquarium (MBA) operates a public aquarium adjacent to the Pacific Grove ASBS. MBA's mission is to inspire conservation of the oceans, and it relies on the use of its open seawater system in carrying out its mission. The aquarium displays marine algae, fish and invertebrates that are dependent upon natural seawater for survival. Numerous live exhibits and MBA's live animal research programs all depend upon the seawater system. The MBA

seawater system also provides flowing seawater to laboratories at the Stanford University Hopkins Marine Station.

On October 18, 2004, the State Water Board notified MBA to cease storm water and nonpoint source waste discharges into an ASBS or to request an exception under the Ocean Plan. In an application to the State Water Board dated August 31, 2006, MBA requested an individual exception to the Ocean Plan's prohibition on discharges into ASBS.

The State Water Board staff prepared and circulated an Initial Study and Draft Mitigated Negative Declaration for the proposed exception in accordance with the California Environmental Quality Act (CEQA) and implementing regulations.

The written comment period ended on March 14, 2011. The State Water Board staff held a public hearing on April 20, 2011 to receive comments on the proposed exception and the Draft Mitigated Negative Declaration. The State Water Board staff has considered the comments and prepared written responses to the comments. Based on the whole record, including the applications, Initial Study and Draft Mitigated Negative Declaration, comments, and responses, there is no substantial evidence that approval of the exception will have a significant effect on the environment because of the terms, special conditions, and prohibitions that comprise the Special Protections in this resolution. The Mitigated Negative Declaration reflects the State Water Board staff's independent judgment and analysis.

POLICY ISSUE

The California Ocean Plan allows the State Water Board to grant exceptions to its provisions as long as the public interest will be served and beneficial uses are protected. If the exception is not granted, the MBA may be forced to shut down its seawater system, seriously hindering its mission of public education and research. Furthermore, if the exception is not granted, MBA will no longer be able to supply seawater to Stanford University's Hopkins Marine Station, which would curtail certain research projects at that laboratory. Based on the Initial Study, staff has determined that discharges from MBA, if controlled and monitored according to the terms and conditions in the Mitigated Negative Declaration, will not compromise protection of ocean waters for beneficial uses.

FISCAL IMPACT

State Water Board staff, using existing personnel resources, would be involved in implementation of the exception and in the review and approval of monitoring program. An existing Division of Financial Assistance Prop 84 grant funded project has already been initiated to ensure statewide consistency for ASBS monitoring. Existing Central Coast Regional Water Board staff would be responsible for implementing the exception by enrolling MBA in the existing Aquaculture General NPDES Permit. Therefore no additional staff resources or contract funds would be required.

REGIONAL BOARD IMPACT

Yes. Central Coast Regional Water Board.

STAFF RECOMMENDATION

Staff recommends adoption of the mitigated negative declaration and the exception because it is in the public interest and it will protect beneficial uses.

State Water Board action on this item will assist the Water Boards in reaching Goals 4 and 6 of the Strategic Plan Update: 2008-2012, to comprehensively address water quality protection and restoration, and to enhance consistency across the Water Boards. In particular, approval of this item will assist in fulfilling Objective/Actions 1.2.5 to develop a stormwater monitoring strategy, and 1.3.3 to implement pilot programs to protect coastal waters.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-

APPROVING AN EXCEPTION TO THE CALIFORNIA OCEAN PLAN FOR THE MONTEREY BAY AQUARIUM DISCHARGE INTO THE PACIFIC GROVE AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE, INCLUDING SPECIAL PROTECTIONS FOR BENEFICIAL USES, AND APPROVING A MITIGATED NEGATIVE DECLARATION

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the California Ocean Plan (Ocean Plan) on July 6, 1972 and revised the Ocean Plan in 1978, 1983, 1988, 1990, 1997, 2000, 2005, and 2009.
2. The Ocean Plan prohibits the discharge of waste to designated Areas of Special Biological Significance (ASBS).
3. ASBS are 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.
4. According to the Public Resources Code, all ASBS are designated as a subset of state water quality protection areas and require special protection as determined by the State Water Board pursuant to the Ocean Plan and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (Thermal Plan).
5. In state water quality protection areas, waste discharges must be prohibited or limited by special conditions, in accordance with the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq., and implementing regulations, including the Ocean Plan and Thermal Plan.
6. The Ocean Plan authorizes the State Water Board to grant an exception to Ocean Plan provisions where the board determines that the exception will not compromise protection of ocean waters for beneficial uses and the public interest will be served.
7. On October 18, 2004, the State Water Board staff notified the Monterey Bay Aquarium (MBA) to cease waste discharges into the Pacific Grove ASBS or to request an exception under the Ocean Plan. On August 31, 2006 the HMS responded with a request for an exception to the California Ocean.
8. The State Water Board finds that granting the requested exception will not compromise protection of ocean waters for beneficial uses, provided that the applicant complies with the prohibitions and special conditions that comprise the Special Protections contained in this resolution. The prohibitions and special conditions in the Special Protections, contained in [Attachment A](#) to this resolution, are intended to ensure that seawater system waste seawater discharges, storm water and nonpoint source discharges are controlled to protect the beneficial uses of the Pacific Grove ASBS, including marine aquatic life and habitat, and to maintain natural water quality within the ASBS. The

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Special Protections are also intended to maintain the natural hydrologic cycle and coastal ecology by allowing the flow of clean precipitation runoff into the ocean.

9. Natural ocean water quality has been defined by the ASBS Natural Water Quality Committee as that water quality (based on selected physical, chemical and biological characteristics) that is required to sustain marine ecosystems, and which is without apparent human influence, *i.e.*, an absence of significant amounts of: (a) man-made constituents (*e.g.*, DDT); (b) other chemical (*e.g.*, trace metals), physical (temperature/thermal pollution, sediment burial), and biological (*e.g.*, bacteria) constituents at concentrations that have been elevated due to man's activities above those resulting from the naturally occurring processes that affect the area in question; and (c) non-indigenous biota (*e.g.*, invasive algal bloom species) that have been introduced either deliberately or accidentally by man. Discharges "*shall not alter natural ocean water quality*" as determined by a comparison to the range of constituent concentrations in reference areas agreed upon via a regional monitoring program.
10. The State Water Board finds that granting the requested exception is in the public interest because the seawater system serves one of the major public aquarium and education institutions in the nation. MBA's mission is to inspire conservation of the oceans, and it relies on the use of its open seawater system in carrying out its mission. The aquarium displays marine algae, fish and invertebrates that are dependent upon natural seawater for survival. Numerous live exhibits and MBA's live animal research programs all depend upon the seawater system. The MBA seawater system also provides flowing seawater to laboratories at the Stanford University Hopkins Marine Station. Although MBA discharges waste seawater and storm water runoff into the ASBS, MBA may control the quality of that discharge through the application of specific controls and management practices. The exception would allow MBA to continue to discharge, provided that MBA meets specific mitigating conditions. The exception also provides additional protections for beneficial uses that are not currently provided. The State Water Board has concluded that the exception will not compromise protection of ocean waters for beneficial uses, and the public interest will be served.
11. The State Water Board staff prepared and circulated an [Initial Study \(1/18/11 version\)](#) and [Draft Mitigated Negative Declaration](#) for the proposed exception in accordance with the California Environmental Quality Act (CEQA) and implementing regulations. The written comment period ended on March 14, 2011.
12. The State Water Board held a public hearing on April 20, 2011 to receive comments on the proposed exception and the Draft Mitigated Negative Declaration. The State Water Board staff has considered the comments and prepared written responses to the comments. The State Water Board finds, based on the whole record, including the application, Initial Study and proposed Draft Mitigated Negative Declaration, comments, and responses, that there is no substantial evidence that approval of the exception will have a significant effect on the environment because of the terms, special conditions, and prohibitions that comprise the Special Protections in this resolution. The [Initial Study \(7/18/11 version\)](#) and proposed Mitigated Negative Declaration reflect the State Water Board's independent judgment and analysis.

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13. Granting the exception is consistent with federal and state antidegradation policies, in 40 C.F.R. §131.12 and State Water Board [Resolution No. 68-16](#), respectively. The terms, special conditions, and prohibitions that comprise these Special Protections will not authorize a lowering of water quality, but rather will improve water quality conditions in the affected ASBS.
14. This resolution only grants an exception to MBA from the Ocean Plan prohibition against waste discharges into the Pacific Grove ASBS. It does not authorize waste discharges to state waters. In order to legally discharge waste into an ASBS, the applicant must have both coverage under this exception and an appropriate authorization to discharge. Authorization to discharge for point source waste discharges to navigable waters consists of coverage under the National Pollutant Discharge Elimination System (NPDES) permit program. Nonpoint source discharges of waste must be regulated under waste discharge requirements, a conditional waiver, or a conditional prohibition.
15. The exception will be reviewed during the triennial review of the Ocean Plan. If the State Water Board staff finds cause to revoke or re-open the exceptions, the Board may do so during the triennial review or at any other time.
16. The State Water Board's record of proceedings in this matter is located at 1001 I Street, Sacramento, California, and the custodian is the Division of Water Quality.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the [Mitigated Negative Declaration](#) for the proposed exception.
2. Approves the exception to the Ocean Plan prohibition against waste discharges to the Pacific Grove ASBS for discharges of waste seawater and storm water runoff by MBA, provided that:
 - a. The discharges are covered under an appropriate authorization to discharge waste to the ASBS, such as an NPDES permit and/or waste discharge requirements;
 - b. The authorization incorporates all of the Special Protections, contained in Attachment A to this resolution, which are applicable to the discharge; and
 - c. Only seawater system waste seawater discharge and storm water discharges by the applicant are covered by this resolution. All other waste discharges to ASBS are prohibited, unless they are covered by a separate, applicable Ocean Plan exception.
3. Authorizes the Executive Director or designee to file the Notice of Determination with the Governor's Office of Planning and Research.

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4. Authorizes the Executive Director or designee to transmit the exceptions to the United States Environmental Agency (U.S. EPA) for concurrence.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 18, 2011.

Jeanine Townsend
Clerk to the Board