

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

ITEM 6

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION APPROVING AN EXCEPTION TO THE CALIFORNIA OCEAN PLAN FOR SELECTED DISCHARGES INTO AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE, INCLUDING SPECIAL PROTECTIONS TO PROTECT BENEFICIAL USES, AND APPROVING A PROGRAM ENVIRONMENTAL IMPACT REPORT.

DISCUSSION

The State Water Resources Control Board (State Water Board), under [Resolution No. 74-28](#), designated certain Areas of Special Biological Significance (ASBS) to be incorporated into water quality control plans for the control of wastes discharged to ocean waters. To date, 34 coastal and offshore island sites have been designated ASBS.

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 California Ocean Plan (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."

A 2003 survey of ASBS documented 1,658 outfalls, primarily storm water and nonpoint sources discharging to ASBS. On October 18, 2004, the State Water Board staff notified applicants to cease storm water and nonpoint source waste discharges into ASBS or to request an exception under the Ocean Plan. The State Water Board has received 27 applications from nonpoint source dischargers and National Pollutant Discharge Elimination System (NPDES) permitted storm water dischargers for an exception to the Ocean Plan prohibition against waste discharges to ASBS.

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. Stringent terms, prohibitions, and special conditions have been proposed by State Water Board staff that provide Special Protections for marine aquatic life and natural water quality in ASBS. These Special Protections are proposed for adoption by the State Water Board as part of an Ocean Plan Exception. The requirements in the proposed Special Protections may be summarized generally to eliminate dry weather runoff, ensure that wet weather runoff does not alter natural water quality in the ASBS, and ensure that adequate monitoring be conducted to determine if natural water quality and the marine life beneficial use are protected.

The proposed Special Protections have been drafted to fulfill the state mandate for protection of water quality in ASBS and to address the requirements identified in the Ocean Plan. The State Water Board staff prepared and circulated a Draft Program Environmental Impact Report (PEIR) for the General Exception to the California Ocean Plan Waste Discharge Prohibition, for Selected Discharges into ASBS, including Special Protections for Beneficial Uses on January 14, 2011. The comment period for the proposed General Exception was extended to end on May 20, 2010, and the Public Hearing was held on May 18, 2011.

The Draft PEIR provides four alternatives: (1) no action, (2) amendments to the Ocean Plan, (3) an individual exception process for each of the 27 applicants, and (4) a General Exception for the 27 applicants (preferred alternative).

If the General Exception is not granted, the applicants will be prohibited from discharging storm water runoff into ASBS and subject to immediate enforcement action. In the short term this may result in either chronic noncompliance, with associated penalties, or, if discharges are curtailed, flooding may occur. Neither of these situations is in the public interest. In the long term, the applicants may be forced to divert all storm water runoff outside of ASBS for discharge. This approach would be very expensive and may also pose a threat to the marine environment.

The implementation of the General Exception and the associated terms and conditions in the Special Protections, will result in improved water quality in the waters of the State's ASBS and better protection of the marine life beneficial uses of the ASBS. Specific projects employed to implement Special Protections may have some adverse impacts to the environment, but these impacts are generally expected to be limited, short-term or may be mitigated through design and scheduling.

Based on the whole record, including the applications, the Draft PEIR, comments, and responses, State Water Board staff recommends that there is no substantial evidence that approval of the General 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 Draft PEIR reflects the State Water Board staff's independent judgment and analysis.

FISCAL IMPACT

State Water Board staff, using existing personnel resources, would be involved in implementation of the General 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 regional monitoring and BMP effectiveness.

Existing Regional Water Board staff would be responsible for implementing the General Exception, primarily through Storm Water NPDES Permits, but also in a few isolated cases by developing waste discharge requirements or waivers. No additional staff resources or contract funds are anticipated.

REGIONAL BOARD IMPACT

Yes. All Coastal Regions (1,2,3,4,8,9).

STAFF RECOMMENDATION

Staff recommends adoption of the Program Environmental Impact Report and alternative four, the General Exception, because it is in the public interest and it will protect beneficial uses. Staff further recommends that during the next triennial review, the General Exception should be evaluated, and those aspects of the General Exception that are successfully protecting beneficial uses may then be incorporated in a subsequent Ocean Plan amendment to address storm runoff into ASBS.

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, 1.3.3 to implement pilot programs to protect coastal waters, and 6.2.1 re-issue the statewide Phase II MS4 permit. The exception supports the Phase II MS4, Caltrans, and General Industrial permit renewals, allowing coverage for permittees adjacent to ASBS (see page 2 of Appendix 1 to the Strategic Plan).

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-

APPROVING EXCEPTIONS TO THE CALIFORNIA OCEAN PLAN FOR SELECTED DISCHARGES INTO AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE, INCLUDING SPECIAL PROTECTIONS FOR BENEFICIAL USES, AND APPROVING A PROGRAM ENVIRONMENTAL IMPACT REPORT

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. Under the Marine Managed Areas Improvement Act, 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 notified a number of parties that they must cease the discharge of storm water and nonpoint source waste into ASBS or request an exception to the Ocean Plan.
8. The State Water Board has now received 27 applications for an exception to the Ocean Plan prohibition against waste discharges into an ASBS. The applicants, who are listed in [Attachment A](#) to this resolution, discharge storm water and nonpoint source waste into ASBS.
9. The State Water Board finds that granting the requested exceptions will not compromise protection of ocean waters for beneficial uses, provided that the applicants comply 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 B](#) to this resolution, are intended to ensure that storm water

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and nonpoint source discharges are controlled to protect the beneficial uses of the affected ASBS, including marine aquatic life and habitat, and to maintain natural water quality within the ASBS. The 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, while preserving coastal slope stability and preventing anthropogenic erosion.

10. The State Water Board finds that granting the requested exceptions is in the public interest because the various discharges are essential for flood control, slope stability, erosion prevention, maintenance of the natural hydrologic cycle between terrestrial and marine ecosystems, public health and safety, the public recreation and coastal access, commercial and recreational fishing, navigation, and essential military operations (national security).
11. The State Water Board staff conducted scoping meetings on August 1, 8, and 15, 2006. The comment period for CEQA scoping closed August 15, 2006. Furthermore, the State Water Board heard a status report on ASBS at the April 1, 2008 meeting.
12. The State Water Board staff prepared and circulated a [Draft Program Environmental Impact Report](#) for the proposed exceptions in accordance with the California Environmental Quality Act (CEQA) and implementing regulations.
13. The State Water Board held a public hearing on May 18, 2011, to receive comments on the proposed exceptions and the Draft Program Environmental Impact Report. The written comment period ended on May 20, 2011. 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 applications, Draft Program Environmental Impact Report, comments, and responses, that there is no substantial evidence that approval of the exceptions will have a significant effect on the environment because of the terms and conditions incorporated into the project. The Draft Program Environmental Impact Report reflects the State Water Board's independent judgment and analysis.
14. Granting the exceptions 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.
15. This resolution only grants an exception from the Ocean Plan prohibition against waste discharges into ASBS to the applicants listed in Attachment A. It does not authorize waste discharges to state waters. In order to legally discharge waste into an ASBS, the applicants must have both coverage under this resolution 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.

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16. The exceptions will be reviewed during the next triennial review of the Ocean Plan. If the State Water Board finds cause to revoke or re-open the exceptions, the board may do so during the triennial review or at any other time. During the next triennial review period staff will also evaluate those aspects of the exception that are successfully protecting beneficial uses, to make recommendations on a potential Ocean Plan amendment to address storm runoff into ASBS.
17. 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. Approves the [Final Program Environmental Impact Report](#) for the proposed exceptions.
2. Approves the exceptions to the Ocean Plan prohibition against waste discharges to ASBS for discharges of storm water and nonpoint source waste by the applicants listed in Attachment A to this resolution, 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 B to this resolution, which are applicable to the discharge; and
 - c. Only storm water and nonpoint source waste discharges by the applicants listed in Attachment A to this resolution 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.
4. Authorizes the Executive Director or designee to transmit the exceptions to the United States Environmental Agency (U.S. EPA) for concurrence.
5. Directs staff to consider development of, and make recommendations for, an Ocean Plan amendment to address storm runoff into ASBS, during the next triennial review period.

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