U.S DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
National Marine Sanctuary Program

West Coast Region
99 Pacific Street, Bldg. 200, Suite K
Monterey, CA 93940

May 11, 2011

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

This letter provides comments from NOAA's Office of National Marine Sanctuaries (ONMS) on your Statewide Program Environmental Impact Report (EIR) for a General Exception to the California Ocean Plan Waste Discharge prohibition for selected discharges into Areas of Special Biological Significance (ASBS). The ONMS serves as the Federal trustee for the nation's system of marine protected areas. ASBS are a subset of State Water Quality Protection Areas (SWQPA), which are defined as a "marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality". The proposed Special Protections identified in the EIR eliminate dry weather runoff, ensure that wet weather runoff does not alter natural water quality in the ASBS, and that adequate monitoring be conducted to determine if water quality supports and protects marine life.

Along the California coast, there are three national marine sanctuaries in which ASBS are located; Gulf of the Farallones, Monterey Bay and Channel Islands. Each sanctuary stands to benefit from the special protections afforded to the ASBS, and has a stake in the outcome of the Statewide EIR for ASBS discharge exemptions. While sanctuary staff members have worked with local jurisdictions over the last ten years to improve water quality in urban runoff, we have yet to determine the impacts to the nearshore environment from these discharges. We are encouraged that you are moving forward with a process to monitor impacts from discharges to ASBS sites and we believe that the EIR creates a framework for improving the water quality within ONMS waters and can better inform us of the conditions in the nearshore waters.

However, it seems there is still much to be considered regarding this outcome. Comments that we submitted one year ago to Constance Andersons (SWRCB) for the Notice of Preparation have yet to be clarified and remain at the center of debate regarding the proposed Special Protections. Those comments are reiterated below as well as other specific comments related to the Statewide Program EIR:

<u>General Comments from a letter to Constance Anderson dated March 12, 2010</u>

1. How will the regional monitoring design adequately determine the effect of storm water discharges on the ASBS? Many proposed studies were submitted by dischargers but none were able to adequately demonstrate impairment or lack of impairment in the receiving waters. This type of study requires a scientific design specific to this question. Effects from storm water discharges cannot be determined based on peripheral studies or ambient monitoring. The studies

should be peer reviewed and conducted by a neutral party with appropriate scientific capacity. One study in southern California[1] is particularly important to informing the development of a regional monitoring program because it aims to compare discharge sites in and outside of ASBS. The preliminary results of this study are available and authors of the Program EIR indicate that more work is needed to further investigate the relationship between biological condition and water quality impacts (pg. 183). Furthermore, in Section 5.6.16, Dr. Raimondi concluded, based on the information provided by the dischargers in applying for the exception, that in three out of four data sets tested using Bray-Curtis multivariate analysis, differences exist (p value significance levels < 5%) between biological communities in ASBS sites with and without direct discharges. However, the differences are not conclusive and it is not clear if the differences are due to other anthropogenic sources. **We strongly agree with the recommendations of this section for implementing a rigorous regional approach with statewide consistency, representative reference sites and statistically robust techniques.**

2. It is unclear how the determination of "Natural Water Quality" will be used in the regulatory context both for discharges and for reference sites. The Program EIR is unclear whether natural water quality criteria or effluent limits in the California Ocean Plan will serve as the basis for regulatory compliance. As we've witnessed in other regulatory programs, if the capacity or ability to enforce the regulations is not in place, the program will not be successful. In addition, the final exception to the California Ocean Plan should not be overly burdensome so that those being regulated have the means to comply.

3. There is no mention of the National Marine Sanctuary's Act under *Regulatory Settings*. Please include section 3.5.1.3, National Marine Sanctuary's Act. The following language is recommended;

> The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Day to-day management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries. The Channel Islands, Monterey Bay, and Gulf of the Farallones National Marine Sanctuaries regulate the discharge of material or matter, including the discharging or depositing from beyond the boundary of the sanctuary any material or other matter that subsequently enters the sanctuary and injures a sanctuary resource or quality.
>
> *See 15 CFR § 922.72, 922.82, 922.132 for specific regulatory language including exceptions.*

<u>Additional Comments Specific to the Draft Programmatic Environmental Impact Report</u>

4. Three alternatives are proposed in the *Summary S.5 Alternatives*. The first alternative is No Action (Status Quo) and states that the SWRCB would not

[1] Report to the State Water Resource Control Board, Summation of Findings, Natural Water Quality Committee, 2006-2009, September 1, 2010.

regulate the discharge of waste into Areas of Special Biological Significance. Yet under the *Issues and Alternatives* Section 4.2 *(page 52)* the No-Project Alternative (aka the No Action) is described as "No Exception" which is different from "Status Quo". Status Quo implies that discharges will continue into ASBS while No Exception implies that discharges must be terminated. The report continues to state that "this alternative would not result in better water quality protection". We are puzzled by this statement because if discharges into ASBS were terminated, water quality would seem to be better protected. The reason for not recommending this alternative is confusing. Clarification is necessary as to whether the staff meant Status Quo or No Exception.

5. Under *Issues and Alternatives Section 4.2 Alternative D*: Implement a General Exception for Selected Dischargers is the staff's preferred alternative. We fully support this approach. However, clearly defined terms are necessary in order to determine compliance by the regulated entities. Page 54 states that the "Special Protections" would be implemented through storm water management plans or through a Waste Discharge Requirement (WDR), waiver, or a conditional prohibition. All ASBS dischargers would have three major requirements:

   a. *A continued prohibition of non-storm water discharges and runoff.* This requirement needs to be clearly defined. Does this mean no discharge during the dry weather season (April through October)? It would be extremely difficult to determine allowed discharges (e.g., ground water or sump pump discharge) versus those discharges that are not allowed (e.g., other non-point sources) in dry periods of the wet weather season. We recommend from both monitoring experience, as well as for practical and enforceable reasons, to establish a monthly definition.

   b. *Wet weather runoff controlled so as not to violate "natural water quality" in the ASBS receiving water.* We have concerns about the seasonality of storm events and their influence on "Natural Water Quality". The "Natural Water Quality" study for the SWRCB[2] highlights this concern. The study is flawed because it did not identify if early season storms or late season storms were monitored. The seasonality of the storm is important when evaluating the pollutant load as the amount of precipitation and amount of "flushing" has a big effect on the amount of contaminants in the runoff, which in turn influences the baseline and effective date of the exception and compliance for reductions in pollutant loading. Which storms are monitored has large implications for reducing pollutant loading by 90% (see Table B parameters). It is necessary to identify which rainfall event will be monitored and be consistent throughout the permit cycle, as pollutant loads will vary greatly between rains early and late in the season.

   c. *Monitoring to ensure protection of beneficial uses.* This requirement is of most interest to sanctuaries. While studies of terrestrial runoff have been

[2] Report to the State Water Resource Control Board, Summation of Findings, Natural Water Quality Committee, 2006-2009, September 1, 2010.

commissioned, we are not aware of any that directly measure end of pipe discharges and receiving waters at zone of impact in order to determine the effect from terrestrial runoff on beneficial uses. We agree this is an important requirment and we look forward to the results of the monitoring on receiving water.

6. Under *Issues and Alternatives Section 4.3.8 Compliance Monitoring (page 68)*, we recommend adding an Alternative C, as a combination of Alternatives A and B to be clear on what the staff is recommending for compliance. Alternative A requires effluent monitoring (end of pipe) to determine compliance. Alternative B **requires** receiving water monitoring and **recommends** end of pipe effluent monitoring. Alternative B should require only receiving water sampling to ensure compliance. Alternative C would be a combination of Alternatives A and B requiring compliance be based on receiving waters meeting "natural water quality" criteria, AND effluent monitoring to better understand loading. Please add an Alternative C and clarify which of the alternatives is recommended.

Staff members from the California sanctuaries appreciate the opportunity to comment on this Draft Program EIR and support the ASBS program. We commend the efforts of SWRCB staff in developing this program with the intent of improving water quality along the coast of California. A well orchestrated program to improve water quality in ASBS sites will ultimately lead to improved water quality along all areas of the coast impacted by terrestrial runoff and will result in better information to manage our coastal resources. If you have any questions on our comments, please contact Bridget Hoover at (831) 647-4217 or bridget.hoover@noaa.gov.

Sincerely,

Carol Bernthal

Carol Bernthal
Acting Regional Director