

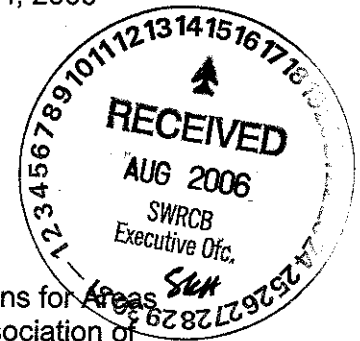
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Ms. Song Her, Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

August 14, 2006



Dear Ms. Her:

Thank you for the opportunity to comment on the proposed Special Protections for Areas of Special Biological Significance (ASBS). We are collaborating with the Association of Bay Area Governments to assist the California Nonpoint Source Pollution Control Program, jointly administered by the State Water Board and the Coastal Commission, in three Critical Coastal Areas Program pilots. Among our activities is to synthesize available information that could be used to identify additional management measures for pollution prevention, beneficial use restoration, and reduction of loads needed to achieve water quality standards. One of these pilot areas is Fitzgerald Marine Reserve, and the watersheds draining into and influencing the Reserve. Based on the work we have conducted there so far, with close participation by a Steering Committee of local agencies, landowners, and other stakeholders, we would like to offer the following comments and suggestions. We hope that these comments will be helpful as Water Board staff prepares the mitigated negative declaration for the proposed ASBS Special Protections.

- 1) Upstream discharges to streams tributary to ASBS are not subject to Special Protections. It is unclear from the draft staff proposal, how "upstream" and "downstream" are defined.
- 2) Existing storm water discharges are allowed to discharge to an ASBS if they are authorized under an NPDES permit or if composed of natural precipitation runoff that does not cause a statistically significant increase in pollutant concentrations ...as compared to a reference stream. In many ASBS, un-impacted streams may be difficult to find, and additional guidance on how "reference" conditions are to be determined may be necessary.
- 3) Allowable non-point source waste discharges into or adjacent to ASBS under this resolution must meet certain conditions. It is unclear what "adjacent" means. Is it within the expected "zone of initial dilution" (to use a point-source term), or within the zone of influence under normal, mid- or worst-case conditions (offshore currents, eddies, anomalous oceanic events)? Does "adjacent" imply that the ranges of selected species of special status are included that may spend crucial parts of their life cycles within or near ASBS?
- 4) The proposed monitoring components do not appear based on any coherent framework of investigation. It would help to derive monitoring parameters and monitoring designs from a meaningful assessment framework that starts out with

management objectives (e.g., protect and restore aquatic life and recreational uses), assessment questions associated with each management objective (e.g. are trends in pathogen indicators getting better or worse?), and means to generate a line of evidence that links undesirable environmental conditions to stressors and management responses designed to reduce or eliminate stressors and document environmental improvement over time.

The proposed monitoring conditions alone cannot fulfill the intended purpose of "adaptive management," because they do not provide for (a) assessing the data and transforming them into information (a.k.a. "data endowed with relevance and purpose"), and (b) reporting results so they are useable to regulators, land use decision-makers, and environmental managers. Too often, we see considerable resources dedicated to generating monitoring data only to see the raw data "placed on a shelf" without sufficient emphasis on interpretation in the context of specific management issues.

Therefore, we strongly recommend that the final "Special Protections" document refer to a stand-alone Monitoring, Assessment, and Communication Plan that is compatible and complementary to the California Surface Water Monitoring Strategy developed by SWAMP and recently approved by EPA, Region 9. Furthermore, all efforts should be taken to integrate any monitoring activities taking place already as part of NPDES, TMDL implementation, Marine Sanctuary, and Department of Fish and Game natural resource inventories into any additional or complementary monitoring requirements for ASBS. This will take some time but will eventually make any kind of monitoring requirements more efficient, effective, and meaningful. For example, considerable efforts are currently underway through the Critical Coastal Areas program to develop a systematic approach to problem identification, management measure implementation, and monitoring environmental outcomes of responses to undesirable beneficial use conditions. The intent is to provide local government and other stakeholders the appropriate tools to reduce pollutant loads where necessary and restore beneficial uses where appropriate. The proposed Special Protection provisions should reference these efforts designed to foster self-directed and flexible means to deal with nonpoint source pollution issues.

We recommend that the monitoring program be structured in a manner that can easily adapt to new information. For example, as the CCA Program proceeds with local stakeholders to fill critical information gaps and to develop monitoring approaches that are capable of linking management responses to undesirable water quality and beneficial use conditions, additional or different indicators may emerge that would provide better feedback loops to management decisions than those currently suggested.

- 5) Most public works departments, storm water management agencies, and the California Department of Transportation are not using the international system of weights and measures. The proposed monitoring requirements applying to storm water outfalls of 0.5 meters or greater are not meaningful, because many outfalls and culverts are standard 18 inches in size (roughly 45 cm, and hence less than 0.5m), which would exclude from monitoring requirements a large volume of flows reaching Areas of Special Biological Significance. We recommend using an outfall size of 15 inches or greater.

Please convey to staff that I would be glad to further discuss these comments with them as they finalize the mitigated negative declaration. I can be reached at 510-746-7381.

Sincerely,

Rainer Hoenicke, Ph.D.
Deputy Director

Cc: Kathleen Van Velsor, ABAG
Val Connor, DWQ
Steve Fagundes, DWQ
Jack Gregg, Coastal Commission