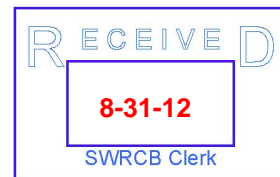




August 31, 2012

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, CA 95814-0100
Sent via electronic mail: commentletters@waterboards.ca.gov



RE: Comment Letter - Ocean Plan Amendment, SWQPA

Dear Chair Hoppin and Board Members:

On behalf of California Coastkeeper Alliance, Heal the Bay, Natural Resources Defense Council, Surfrider Foundation, Ocean Conservancy, Orange County Coastkeeper and Santa Barbara Channelkeeper, we welcome the opportunity to comment on the draft Substitute Environmental Document (“Draft SED”) and July 25, 2012 revisions to the Ocean Plan Amendments on State Water Quality Protection Areas and Marine Protected Areas (“Revised Amendment”).

As mentioned previously, we believe the proposed Amendment is unnecessary. However, we recognize that the State Water Board is moving forward and sees this Ocean Plan Amendment process as an opportunity to establish a framework for water quality protection in State Water Quality Protected Areas (SWQPAs). We believe that staff has taken notable steps to improve the language in the proposed Amendment.

In particular, we appreciate the inclusion of language in Section 5.6.3 of the Draft SED, which states that exceptions to discharges within ASBS shall be granted *only* if beneficial uses are protected and the public interest is served. We also support the inclusion of language in Section 5.7.3 that recognizes that concurrent designation of a Marine Protected Area (“MPA”) and a State Water Quality Protection Area-General Protection (“SWQPA-GP”) may lead to environmental and economic benefits, and that overlap of MPAs and SWQPAs-GP will strengthen the objectives of the Marine Life Protection Act (“MLPA”) and the Marine Managed Areas Improvement Act (“MMAIA”).

The network of MPAs in California provides protection for areas of ecological importance and the range of beneficial uses identified in the Ocean Plan. It is essential that the proposed Ocean Plan Amendment be consistent with the purpose and intent of the MLPA to ensure maximum benefit to coastal water quality and marine resources. The goals of the MLPA establish a framework for *holistic* ecosystem protection in order to conserve and sustain marine life and habitats. As such, the success of MPAs relies not only on the protection of specific areas, but also on the preservation of water quality within those areas. Given the concomitance of these issues, it would be unwise for the State Water Board to ignore the presence of MPAs in this Amendment. We urge you to adopt policies that compliment and strengthen the goals of the MLPA, as described below.

We urge the State Water Board to retain the essential “sole basis” language in Provision 2 and revise the other sections of the Amendment as proposed in this letter. These actions will ensure that the Amendment is compatible with the goals of the MLPA, MMAIA, and other statutes to protect marine ecosystems.

Municipal Point Source Water Discharge Outfalls (Provision 2)

Provision 2 has been revised to state that:

*The designation of State Marine Parks and State Marine Conservation Areas may not serve as the **sole basis** for new or modified limitations, substantive conditions, or prohibitions upon existing municipal point source wastewater discharge outfalls. This provision does not apply to State Marine Reserves.*

We strongly support this revision and respectfully request that staff retain the “sole basis” language in the final Ocean Plan Amendment. Provision 2, as currently written, specifies that MPA designation *alone* cannot be the only driver for new regulations in State Marine Parks or State Marine Conservation Areas. However, this language also allows for the designation of SWQPAs when additional water quality protections are merited: in situations where wastewater is causing or contributing to degradation of marine life, habitat and/or water quality within MPAs or adjacent waters.

The Ocean Plan establishes water quality objectives to ensure the protection and enhancement of beneficial uses including: designated ASBS; rare, threatened and endangered species; marine habitat; migration of aquatic organisms; spawning, and reproduction and early development of fish. Because MPAs protect and enhance beneficial uses, the issues of water quality and MPAs are inextricably linked. As such, it would be unwise for the State Water Board to make water quality regulatory decisions without acknowledging the presence of MPAs.

We oppose Los Angeles County Sanitation District’s (“LA County Sanitation”) proposed revision that “MPAs should not be a basis” for new regulations on existing wastewater outfalls. As stated in our April 18, 2012 comment letter, revising Provision 2 in this manner inappropriately carves out a blanket exception for continued municipal wastewater discharge and possible water quality and marine life and habitat degradation in MPAs. We recognize previous concerns raised by LA County Sanitation that MPAs may be used arbitrarily in the future to establish stricter water quality standards. However, it is important to recognize the ecological importance of MPAs and the role that water quality may play in their success. We believe that the “sole basis” language reflects an approach that will not allow for subjective tightening of water quality standards simply because an MPA exists, yet allow for revisions to water quality regulations in an MPA if merited (as evidenced by biological and/or habitat degradation caused by poor water quality).

Ironically, the revision proposed by LA County Sanitation may be interpreted to provide an exemption for wastewater discharges near an MPA that would not be exempt in the absence of a nearby MPA. Removal of the “sole basis” language could also have the bizarre effect of preventing a regulation change warranted more broadly by new information on impacts, undermining both the established 5-year review process and the intent of the Clean Water Act to modify permits for new threats, as well as the effort to promote new technology and practices to improve water quality.

It is important to recognize that the proposed Ocean Plan Amendment is already a compromise that is being advanced on behalf of LA County Sanitation. As several of our groups have stated in previous comment letters and oral testimony, we believe that there is no need to formally amend the Ocean Plan to address SWQPAs. In November 2010, State Water Board adopted Water Board

Resolution 2010-00571 in response to concerns raised by LA County Sanitation about the potential for the State Water Board to take future action to implement stricter water quality standards in the South Coast MPAs adopted by the Fish and Game Commission under the MLPA. We believe that Resolution 2010-0057 provided sufficient clarity regarding the regulation of SWQPAs, and do not support the removal of the “sole basis” language to further address this individual entity’s complaints.

The State Water Board should help facilitate the effective implementation of MPAs through the Ocean Plan. At a minimum, the Board should refrain from formal adoption of an exemption that prohibits future regulation protecting ecologically important areas. Such regulation would be wholly appropriate if wastewater is causing or contributing to degradation of marine life, habitat, or water quality in all water bodies, be they MPAs or unprotected waters.

Marine Managed Areas (Provision 1)

As currently written, Provision 1(a)(2) in the proposed Amendment removes “other unique and sensitive areas” from the definition of areas that require water quality protection under the SWQPA-GP designation. We oppose the removal of this language and urge the State Water Board to retain this language in the final Amendment to the Ocean Plan.

California’s MPAs were designated through extensive negotiations across diverse stakeholder groups, including recreational and commercial fishermen, as well as conservation interests. As a result of this process, many compromises were made that resulted in the protection of many ecologically important areas within MPAs. However, several other identified biologically and ecologically important areas did not get the same MPA designated protection. In Southern California alone, there are many examples of unique and sensitive areas that have not been protected within MPAs, yet merit protection under the SWQPA-GP designation. These include, but are not limited to, areas of barred sand bass spawning at Ventura Flats, Santa Monica Bay, Huntington Beach Flats, San Onofre and San Diego. Many thriving rocky reef and kelp forest habitats with abundant wildlife were also left out of MPAs, including Rocky Point at Palos Verdes, Point Loma, Carpentaria Reef, and many areas off Catalina.

Ecologically important areas that support beneficial uses should not be precluded from water quality protection simply because they were not included in MPAs. Therefore, the SWQPA-GP designation should be expanded to include unique and sensitive areas (as was proposed in the previous Amendment draft) in addition to protection for MPAs.

Implementation Provisions for SWQPAs-GP (Provision 5)

Implementation provisions for existing point source wastewater discharges

We are concerned that terminology in Provision 5 may be too ambiguous and remain open to interpretation. Provision 5(a)(1) states that “a SWQPA-GP shall not be designated over existing permitted point source wastewater discharges or *encroach* upon the zone of initial dilution associated with an existing discharge.” However, the meaning of encroachment has not been defined. We urge State Board staff to clearly define “encroach” in this provision to help provide direction on how this provision would be applied.

Additionally, Provision 5 inappropriately proscribes future regulation. Provision 5(a)(3) states that “[w]here new SWQPAs are established in the *vicinity* of existing municipal wastewater outfalls, there shall be no new or modified limiting condition or prohibitions for the SWQPAs relative to those wastewater outfalls.” Similar to our concerns regarding encroachment, the term “in the vicinity” has not been defined. Furthermore, we are concerned that this provision still proscribes future regulation by

disavowing any future regulation related to a wastewater outfall. As discussed previously in this letter (Provision 2 “sole basis” section), we are concerned that there may be no recourse to adjust water quality regulations if a wastewater outfall is contributing to biological or ecological degradation of an MPA. We also believe that this provision is duplicative of Provision 5(a)(1), and encourage State Board staff to delete it. If Provision 5(a)(3) is retained, we urge State Board staff to clearly define “in the vicinity” and revise the provision to read, “Where new SWQPAs are established in the vicinity of existing municipal wastewater outfalls, the SWQPA-GP should not be the sole basis for new or modified limiting conditions or prohibitions for the SWQPAs relative to those wastewater outfalls.”

We are unclear about the intention of Provision 5(a)(4). It appears redundant. Provision 5(a)(4) states that “[r]egulatory requirements for discharges from existing treated municipal wastewater outfalls shall be derived from the California Ocean Plan.” The purpose of this provision is unclear. Once adopted, Provision 5(a)(4) is the California Ocean Plan, and thus any regulatory requirements adopted would be consistent. We recommend clarifying the intent of this provision, or if State Water Board staff agrees that it is indeed redundant, it may be best to delete it.

Provision 5(a)(5) includes language regarding “undesirable alteration in natural water quality.” However, “undesirable alteration” has not been defined. We urge the State Board to include a definition for “undesirable alteration” in the proposed Amendment. Furthermore, this provision includes a reference to alterations of “natural water quality” but in other sections of the Amendment, the language references “natural *ocean* water quality.” Staff should explain whether there is a difference in these standards or apply consistent terminology throughout the Amendment.

Implementation provisions for permitted separate storm water sewer system (MS4) discharges and nonpoint source discharges.

We appreciate that staff is currently working on amendments to the Ocean Plan that will address trash discharges into SWQPAs. However, since the trash policy process has not been completed, we believe the clear policy language included in Provision 5(c)(2), which prohibits the discharge of trash, should be retained. SWQPAs are discrete areas of biological ecological importance, and as such, should be protected from trash discharge, especially since trash is a clear threat to marine life, which often confuse trash for food and ingest it, causing health problems and sometimes death.

Implementation provisions for seawater intakes.

We strongly support Provision 5(d)(2), which details a clear prohibition of new seawater intakes within MPAs. However, we recommend that new seawater intakes between MPAs be strictly regulated, as the cumulative impacts of marine life mortality associated with entrainment and impingement could seriously threaten the network benefits of the MPAs established under the MLPA. The State Water Board can complement and strengthen the goals of the MLPA by addressing the potential cumulative impacts associated with new seawater intakes. Therefore, we recommend the State Water Board include an additional provision under 5(d)(2) that addresses the potential cumulative impacts associated with new seawater intakes.

Implementation provisions for new discharges.

In the previous draft of the Ocean Plan Amendment, Provision 5(d)(2) stated that no new seawater intakes shall be established within SWQPAs-GP. In the current version of the Amendment, this language has been revised to explicitly allow for sub-seafloor intakes where studies show there is “no predictable entrainment or impingement of marine life.” We believe this language is sufficiently protective of marine resources and support this revision.

The undersigned organizations are dedicated to protecting coastal resources and water quality throughout California. We have spent significant time working to ensure successful implementation of the State's new MPAs under the MLPA, and will continue to work towards holistic protection of these ecologically important areas.

We appreciate the State Water Board's effort to develop a framework for the establishment of SWQPAs in the proposed Amendment. We appreciate the opportunity to comment on the revised Draft SED and Ocean Plan Amendments and thank you for considering these comments. Please contact us if you have any questions.

Sincerely,



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