

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
NOVEMBER 16, 2010**

ITEM 4

SUBJECT

CONSIDERATION OF A RESOLUTION TO PROVIDE STAFF WITH DIRECTION REGARDING MARINE PROTECTED AREAS AND STATE WATER QUALITY PROTECTION AREAS.

DISCUSSION

The Marine Life Protection Act (MLPA, added by Stats. 1999, Chapter 1015) requires the redesign of California's system of marine protected areas (MPAs) to function as a network for reasons that include improving the protection of marine life, habitats, and marine ecosystems. According to the Marine Managed Areas Improvement Act (MMAIA, added by Stats. 2000, Chapter 395) a "marine managed area" (MMA) is a named, discrete geographic marine or estuarine area along the California coast designated by law or administrative action, and intended to protect, conserve, or otherwise manage a variety of resources and their uses. Three types of MMAs are MPAs, including marine reserves, marine parks and marine conservation areas.

The MLPA is codified in the California Fish and Game Code (Cal. Fish & G. Code § 2850 et. seq.), while the MMAIA is in the Public Resources Code (Cal. Pub. Resources Code § 36600 et. seq.). The MMAIA states that one classification of MMA is a State Water Quality Protection Area (SWQPA), which is "a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board..." (Cal. Pub. Resources Code §36700, subd. (f)). The statute further provides that in a state water quality protection area, point source waste and thermal discharges shall be prohibited or limited by special conditions.(Cal. Pub. Resources Code § 36710, subd. (f)).

The California Ocean Plan requires protection of species or biological communities in areas of special biological significance (ASBS), also requiring that waste discharges are prohibited in ASBS. Discharges near an ASBS shall be at a sufficient distance to assure natural water quality. The California Ocean Plan further states that all ASBS are a subset of SWQPAs, but contains no specific requirements for other SWQPAs that are not ASBS.

In August 2004, the California Resources Agency, the Department of Fish and Game, and the Resources Legacy Fund Foundation launched an effort initiated by a Memorandum of Understanding, to implement the MLPA. This MLPA initiative established an MLPA Blue Ribbon Task Force ("BRTF"). The BRTF, together with a Master Plan Science Advisory Team and stakeholder advisory groups, was charged with overseeing the preparation of proposed statewide designations for ultimate adoption by the California Fish & Game Commission.

Informal advice from the California Office of the Attorney General, dated September 25, 2009, has been provided regarding establishment, use, and enforcement of MPAs and MMAs. Based upon the Attorney General's advice, the MLPA staff concluded that the designation of MPAs

cannot restrict non-fishing uses and activities that have already received approved regulatory permits. The Fish and Game Commission has released a Draft Environmental Impact Report analyzing the environmental impacts of implementing MPAs in southern California, and on September 7, 2010, published for public comment a Notice of Proposed Changes to Section 632, Title 14, CCR, Re: South Coast Marine Protected Areas, (known as the Initial Statement of Reasons or "ISOR"). The ISOR states that pre-existing activities, including but not limited to wastewater outfalls, occur throughout the MLPA south coast study region and that these activities may result in incidental take. However, these wastewater outfalls are regulated by the water boards under NPDES permits. The proposed MPA regulations would allow wastewater outfalls, which may cause incidental take in an MPA, to continue under NPDES permits.

Mandated water quality monitoring activities are required under the federal Clean Water Act, the California Water Code, the Ocean Plan, and NPDES permits, and may include monitoring stations within the MPAs. The MLPA specifically states that monitoring and research are permissible in all MPA designations. (Cal. Fish & G. Code § 2853, subd. (c)(3)). Monitoring may be authorized pursuant to a scientific collecting permit issued by the Department of Fish and Game, and the proposed regulation adds a general provision to Section 632(a), Title 14, CCR, to clarify that this activity is authorized in all MPAs pursuant to a scientific collecting permit.

Staff of the State Water Board has participated as part of the MLPA Master Plan Science Advisory Team (SAT), along with other scientists from academia and other state and federal agencies. The SAT has provided guidance with regard to water quality and MPAs: the siting of MPAs should consider avoiding areas of poor or threatened water quality, such as at intake sites for power plants, storm runoff from developed watersheds, and municipal sewage or industrial wastewater outfalls. The SAT has also stated that of these three water quality threats, wastewater effluents are of the least concern, but still may pose a risk. The SAT has further recommended that marine water quality will play a role in the success of MPAs, and suggested that the regional water boards may recommend to the State Water Board the designation of additional SWQPAs over MPAs, or work on priority total maximum daily loads that could restore water quality in MPAs.

All existing municipal wastewater outfalls are currently regulated under NPDES permits issued by the regional boards and based on the water quality standards and other regulatory requirements of the Ocean Plan. Existing wastewater outfalls represent an important public service and substantial infrastructure, and when discharges comply with NPDES permits, should not harm water quality. Compliance with Ocean Plan standards assures protection of marine water quality in the State's near coastal waters everywhere outside of the zone of initial dilution (ZID) of those outfalls.

POLICY ISSUE

Should the State Water Board adopt the Resolution that provides guidance and direction to staff regarding the implementation of the California Ocean Plan relative to Marine Protected Areas?

FISCAL IMPACT

Staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL BOARD IMPACT

No immediate impact on Regional Water Boards, but may involve Regional Water Board staff resources during the designation process of any additional SWQPAs.

STAFF RECOMMENDATION

That the State Water Board adopt the Resolution that provides guidance and direction to staff regarding the implementation of the California Ocean Plan relative to Marine Protected Areas.

State Water Board action on this item will assist the Water Boards in reaching Goal 5 of the Strategic Plan Update: 2008-2012 to increase the transparency of the Board's actions and to enhance consistency. In particular, approval of this item will assist in fulfilling Objective 5.1 to improve the current Water Board systems, programs, functions, and core business processes to enhance effective and consistent implementation of Water Board Plans and policies, and State and federal laws and regulations, and to reduce processing time and costs.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

MARINE PROTECTED AREAS AND STATE WATER QUALITY PROTECTION AREAS

WHEREAS:

1. The Marine Life Protection Act (MLPA; Fish & Game Code §§ 2850 et seq.) directs the state to redesign California's system of marine protected areas (MPAs) to function as a network in order to: increase coherence and effectiveness in protecting the state's marine life and habitats, marine ecosystems, and marine natural heritage, as well as to improve recreational, educational and study opportunities provided by marine ecosystems subject to minimal human disturbance.
2. According to the Marine Managed Areas Improvement Act (MMAIA; Cal. Pub. Resources Code §§ 36600 et. seq.) a "marine managed area" (MMA) is a named, discrete geographic marine or estuarine area along the California coast designated by law or administrative action, and intended to protect, conserve, or otherwise manage a variety of resources and their uses.
3. The Public Resources Code states that one classification of MMA is a State Water Quality Protection Area (SWQPA), which is "a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board ..." The statute further states: "In a state water quality protection area, point source waste and thermal discharges shall be prohibited or limited by special conditions."
4. The California Ocean Plan requires protection of species or biological communities in areas of special biological significance, and requires that waste discharges are prohibited in ASBS. In addition, discharges shall be at a sufficient distance from an ASBS to assure natural water quality. The California Ocean Plan states that all ASBS are a subset of SWQPAs, but does not have specific requirements for other SWQPAs that are not ASBS.
5. In August 2004, the California Resources Agency, the Department of Fish and Game, and the Resources Legacy Fund Foundation launched an effort, initiated by a Memorandum of Understanding, to implement the MLPA. This MLPA initiative established an MLPA Blue Ribbon Task Force together with a Master Plan Science Advisory Team and stakeholder advisory groups, to oversee the preparation of proposed statewide designations for ultimate adoption by the California Fish & Game Commission.
6. The California Office of the Attorney General has provided informal advice, dated September 25, 2009, regarding establishment, use, and enforcement of MPAs and MMAs. As a result of the Attorney General's advice, the MLPA staff concluded that the designation of MPAs cannot restrict non-fishing uses and activities that have already received approved regulatory permits.
7. The Fish and Game Commission released for public comment a Draft Environmental Impact Report on August 18, 2010, analyzing the environmental impacts of implementing MPAs in southern California.

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8. On September 17, 2010, the Fish and Game Commission published for public comment a Notice of Proposed Changes to Section 632, Title 14, California Code of Regulations regarding South Coast Marine Protected Areas (known as the Initial Statement of Reasons or "ISOR"). The ISOR states that pre-existing activities including, but not limited to, wastewater outfalls occur throughout the south coast study region and that these are activities that may result in incidental take. However, these activities are regulated by the water boards under National Pollution Discharge Elimination System (NPDES) permits. The proposed MPA regulations state that wastewater outfalls are allowed to continue pursuant to NPDES permits.
9. Mandated water quality monitoring activities are required under the federal Clean Water Act and California Water Code, and may include monitoring stations within the MPAs. The MLPA specifically states that monitoring and research are permissible in all MPA designations. Monitoring may be authorized pursuant to a scientific collecting permit issued by the Department of Fish and Game, and the proposed regulation adds a general provision to Title 14, California Code of Regulations, Section 632, subdivision (a), to clarify that this activity is authorized in all MPAs pursuant to a scientific collecting permit.
10. The MLPA Master Plan Science Advisory Team has provided guidance with regard to water quality and MPAs. The siting of MPAs should consider avoiding areas of poor or threatened water quality, such as at intake sites for power plants, storm runoff from developed watersheds, and municipal sewage or industrial wastewater outfalls. The Science Advisory Team has also stated that of these three water quality threats, wastewater effluents are of the least concern, but still may pose a risk.
11. The Science Advisory Team has further recommended that marine water quality will play a role in the success of MPAs, and the regional water boards may recommend to the State Water Resources Control Board the designation of additional SWQPAs, or work on priority total maximum daily loads that could restore water quality in MPAs.
12. Regulatory requirements applicable to discharges from existing treated municipal wastewater outfalls, including discharges within or in the vicinity of MPAs, are derived from the water quality standards in the California Ocean Plan.
13. Because of limited staff resources, it is desirable and necessary for the Board to set priorities and provide direction on tasks and goals.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Directs staff to prioritize ongoing work related to exceptions for current discharges to ASBS ahead of new work related to designation of new ASBS and SWQPA until all of the current ASBS discharge issues are resolved through the exception process, and all of the MPAs are designated and implemented statewide.
2. Upon completion of all work associated with ASBS discharges, and once all MPAs are implemented by the Department of Fish and Game and the Department of Parks and Recreation, directs staff to work with the Regional Water Boards to develop recommendations for new SWQPAs to protect water quality in MPAs.

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3. For SWQPAs, that are not ASBS, the Board directs staff to consider the following approach in developing new SWQPAs. The Board further directs staff to propose amendments to the Ocean Plan consistent with this approach, as appropriate:
 - a) SWQPAs should not be established over existing outfalls or the zone of initial dilution (ZID) of such existing outfalls;
 - b) where new SWQPAs are established in the vicinity of existing municipal wastewater outfalls, there shall be no new or modified limiting conditions or prohibitions for the SWQPAs relative to those wastewater outfalls;
 - c) regulatory requirements for discharges from existing treated municipal wastewater outfalls shall be derived from the California Ocean Plan;
 - d) no new wastewater outfalls may be established within SWQPAs,
 - e) conditions to protect water quality in SWQPAs would be required to address storm water and nonpoint sources; and
 - f) assure that the designation of any new SWQPA would not include a condition to move existing wastewater outfalls, which represent an important public service and substantial infrastructure.
4. Directs staff to propose an amendment to the Ocean Plan clarifying that no new or modified limitations, substantive conditions, or prohibitions will be imposed upon existing municipal wastewater discharge outfalls based on the designation of MPAs other than State Marine Reserves.

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 November 16, 2010.

Jeanine Townsend
Clerk to the Board