



April 17, 2012

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
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Sacramento, CA 95814  
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**RE: Proposed amendments to the California Ocean Plan related to the State Water Board designation of State Water Quality Protection Areas and Marine Protected Areas**

Dear Jeanine:

The Center for Biological Diversity (“CBD”) has reviewed with interest the State Water Board’s proposed amendments to the California Ocean Plan (“Ocean Plan”) related to the designation of State Water Quality Protection Areas (“SWQPs”) and Marine Protected Areas (“MPAs”). While we approve of the movement on the part of the Board to construct specific water quality regulations to account for the needs of MPAs, there is far more that the Board could do to ensure that MPAs fulfill their statutory functions. Indeed, these functions will likely be impaired under the Board’s proposed amendments. In addition, we are concerned that certain parts of the Board’s economic analysis of regulatory options fall short of the rigor that we would expect when considering such an important issue.

As you are aware, MPAs are the physical cornerstones of California’s legal protections for this state’s unparalleled diversity of marine flora and fauna. The Fish & Game Code makes clear that MPAs “are primarily intended to protect or conserve marine life and habitat” (Sec. 2852(c)). The standardization of MPAs under the Marine Life Protection Act established further goals for the MPA network, including that it “increase its coherence and its effectiveness at protecting the state’s marine life, habitat, and ecosystems” (Sec. 2853(a)).

The proposed amendments to the Ocean Plan, while regulating some current and potential future emissions in MPA areas, do precious little to address so-called “low threat” forms of water pollution that are threatening the viability of California’s MPAs. If the proposed amendments to the Ocean Plan are adopted, then the status quo ante of marine pollution in MPAs could continue indefinitely. This would not increase the effectiveness of MPAs in protecting the state’s marine life and would not take full advantage of the potential benefits that MPAs offer. We do not believe that dischargers should be grandfathered and allowed to continue to pollute. Rather, if their discharges are contributing to violations of water quality standards, including designated uses then there should be a way to require mitigation or cessation of the discharges.

In addition, we are concerned that the draft Substitute Environmental Documentation’s (“SED”) analysis of the costs of regulating existing sources of water pollution that affect MPAs is limited.

While the SED cites very high costs for mitigating action, it pays almost no attention to the potential economic benefits of such mitigation, including: increased fishery health and productivity, increased tourism value in MPA areas, and the cost-saving efficiency of adopting modern pollution control technology. In short, CBD believes that the SED's cost-benefit analysis – such as it is – is not sufficiently rigorous.

CBD applauds the efforts of the Board to thoughtfully design a regulatory framework that seeks to ensure that future sources of water pollution do not threaten the biological integrity of California's MPAs. However, we believe that existing sources of pollution threaten the health of MPAs and consequently they should be regulated by the proposed amendments as well. We recommend that the Board revise the proposed amendments to remedy this failing, and ensure that MPAs realize their legal requirement to be refuges for our state's marine life.

Yours truly,

/s/ Miyoko Sakashita  
Miyoko Sakashita