
Issue 5: Depositing and Discharging Activities

Introduction

All discharges and deposits are subject to regulation under the scope of the Sanctuary designation. Consistent with the primary objective of the MPRSA to protect the Sanctuary and its resources, section 301 (b) (5) of the MPRSA, 16 U.S.C. §1431 (b) (5), the Sanctuary regulations address discharges and deposits within the Sanctuary boundary (15 CFR §944.5 (a) (2)) as well as those discharges and deposits outside the Sanctuary boundary that enter the Sanctuary and injure resources and qualities (15 CFR §944.5 (a) (3)).

No new discharges will be permitted into the Sanctuary, unless Sanctuary resources and qualities are adequately protected. For new municipal discharges, NOAA will require secondary treatment or greater, as necessary, depending on the risk to Sanctuary resources and qualities. All disposal of dredged material in the Sanctuary other than at existing sites will be prohibited. New disposal at existing sites will be subject to NOAA approval.

In accordance with section 304 (c) (2) of the MPRSA, 16 U.S.C. § 1434 (c) (2), NOAA may regulate the exercise of existing permits through certification which may include the imposition of terms and conditions consistent with the purposes for which the Sanctuary is designated. Discharge and material disposal permits to be issued after the date of designation will be subject to a review process which may include added terms and conditions or objection to issuance, as necessary to protect Sanctuary resources and qualities. Any application for an amendment, renewal, or extension to an existing permit will be considered an application for a new permit.

NOAA will work within the existing process, rather than create an entirely new regulatory review and approval procedure, governing discharge activities in the MBNMS area and coastal watersheds that currently require (or will require) a National Pollutant Discharge Elimination System (NPDES) permit or a Wastewater Discharge Requirement (WDR) permit for discharges that affect, or may affect, the MBNMS. Generally, these permits are issued for municipal, power, and industrial plants, and for the use of ocean disposal sites.

NOAA has entered into a Memorandum of Agreement (MOA) with the state of California, EPA and the Association of Monterey Bay Area Governments (AMBAG) regarding the Sanctuary regulations relating to water quality within state waters within the Sanctuary. With regard to permits, the MOA encompasses (i) NPDES permits issued by the state of California under section 13377 of the California Water Code and (ii) WDR permits issued by the state of California under section 13263 of the California Water Code. The MOA specifies how the Sanctuary certification process for existing permits and review process for new or revised (including renewal) permits will be administered within state waters within the Sanctuary in coordination with the state permit program. The MOA also addresses integration and coordination of research and monitoring efforts and the development of a comprehensive water quality protection program for the Sanctuary. The MOA can be found in Appendix G of the FEIS/MP.

Regarding disposal activities, the Sanctuary regulations prohibit the designation and use of any new ocean dredged material disposal sites within the Sanctuary. NOAA intends to work closely with COE and EPA to determine the need for any additional measures in their regulatory program necessary to insure protection of Sanctuary resources and qualities from future dredged material disposal activities. Existing dredged material disposal activities located within the Sanctuary boundary will continue to be regulated under Section 103 of the MPRSA and Section 404 of the Clean Water Act (CWA). These activities have previously undergone intense public scrutiny and environmental oversight by EPA. Any proposed new activities at existing sites, i.e., activities not pursuant to and in compliance with an existing permit or approval will be subject to the review process of 15 CFR § 944.11.

Dredged material disposal activities located at existing sites outside the Sanctuary boundary and at the authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation will be regulated primarily under Section 103 of the MPRSA and Section 404 of the CWA and will not be regulated under the Sanctuary regulatory regime. Because of the intensive environmental evaluation of disposal sites by COE and EPA, NOAA does not anticipate that any site designated for disposal of dredged material will impact Sanctuary resources. Therefore, the Sanctuary regulatory prohibition and discharges does not apply to dredged material deposited outside the Sanctuary at existing disposal sites off of the Golden Gate, and will not apply to dredged material deposited outside the Sanctuary at the authorized disposal site that will result from the disposal site study underway on the effective date of Sanctuary designation. The future disposal site will be located within one of the Long-Term Management Strategy Ocean Study Areas described in Appendix IV to the Sanctuary regulations. When that site is authorized, Appendix IV will be amended to indicate its precise location. The COE will coordinate closely with NOAA concerning the management of dredged material disposal activities at the new site.

NOAA has excluded a small area in the northern portion of Boundary Alternative 5 from the Sanctuary. The excluded area is not appropriate for inclusion within the MBNMS. It encompasses the anticipated discharge plume of the combined sewer overflow component of the City and County of San Francisco's sewage treatment program and the Golden Gate dredged material disposal site. (see NOAA's *Sanctuary Boundary* responses).

Comment

NOAA Response

General State and Federal Regulatory Control

Depositing or discharging from any location within the boundary of the Sanctuary or from beyond the boundary of the Sanctuary should be prohibited. The regulation of discharges to improve effluent quality is a significant concern.

California's possible loss of control over specific activities in State waters is a concern. NOAA's discharge regulation and permit activities should be limited to Federal waters, and such actions should be coordinated through the appropriate agencies and cooperative agreements.

The regulatory working agreements that exist now, specifically between the EPA, State Water Resources Control Board, and the Regional Water Quality Control Board (RWQCB) should be formally agreed upon before the management plan is adopted to assure cooperation.

NOAA should address the conflict existing between California policy and Sanctuary designation. A joint EIS/EIR must be prepared according to the California Environmental Quality Act (CEQA). This joint plan should respect the laws of the state of California, not supersede them.

General State and Federal Regulatory Control

NOAA is regulating deposits and discharges from within the boundary of the Sanctuary and deposits and discharges from beyond the boundary of the Sanctuary that subsequently enter the Sanctuary and injure Sanctuary resources or qualities. NOAA will work with the COE, EPA, and other agencies, dischargers, and potential dischargers to improve water quality. NOAA may require special terms and conditions, including (but not limited to) improved effluent quality to ensure Sanctuary resources and qualities are protected.

Although only about 16 percent of preferred Boundary Alternative 5 lies within state waters, the resources and qualities found there (including, but not limited to, coastal wetlands and estuaries) are the most vulnerable to discharges and degraded water quality. To ensure Sanctuary resources and qualities are protected uniformly in this area, NOAA needs regulatory authority over all discharges. NOAA will work closely with water quality management agencies to determine specific procedures to achieve the goals of the Sanctuary using the existing discharge permitting process. See the *Introduction* to this section.

NOAA has entered into a MOA with the state of California, EPA and AMBAG regarding the Sanctuary regulations relating to water quality with state waters within the Sanctuary. See the *Introduction* to this section.

NOAA has enjoyed a close working relationship with the State of California throughout the entire designation process. NOAA's intent is to enhance state and Federal natural resource protection programs, not usurp them. Because NOAA is the sole agency responsible for designating the Sanctuary, only NEPA applies. Under the MPRSA the Governor of California has forty-five days of continuous session of Congress, beginning on the day of publication of the final regulations in the Federal Register, to certify to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the Sanctuary lying within the seaward boundary of the state.

Comment

Some city governments do not favor NOAA regulation, and suggest instead that NOAA act in an "oversight capacity" to ensure that State and regional boards comply with regional discharge standards, and address the quality of discharge instead of the process. Because NOAA is inexperienced in California water control issues, it should defer to strict State regulations.

NOAA should include California's Ocean Plan and the Central Coast Regional Basin Plan standards in the Sanctuary regulations.

NOAA's assumption of regulatory authority is a concern. To maintain an equitable regulatory regime, old and new dischargers should have the same benefits and restrictions.

All cities should be required to obtain the appropriate permit from NOAA, and NOAA should control and reduce discharges to improve effluent quality.

NOAA should clearly define regulations and procedures prior to assuming responsibility, and should clarify its position by either defining requirements for all dischargers in the FEIS/MP or by setting conditional discharge requirements during the planning phase.

Discharges from outside the Sanctuary should be prohibited, including sewage outfalls and contaminated waste because, in the future, affected waters

NOAA Response

Under the MOA described above NOAA will be acting in an oversight capacity within the existing regulatory framework. NOAA requires the existing regulatory authorities to act within this framework to ensure Sanctuary resources and qualities are protected.

The existing plans and standards will provide a starting point from which NOAA will evaluate how effectively: 1) dischargers meet the terms of the plan; and 2) the standards and guidelines protect Sanctuary resources and qualities. In addition, NOAA does not intend to eliminate any existing state or Federal authority, but rather to build upon the existing regulatory framework to provide the level of protection necessary for the nationally significant resources and qualities of Monterey Bay. NOAA will coordinate with and make recommendations to the appropriate state agencies as these Ocean and Basin Plans are updated to strengthen the protection of the MBNMS.

The MPRSA gives NOAA different authority regarding pre-existing versus new permits. NOAA can only regulate the exercise of permits existing on the effective date of Sanctuary designation, not terminate them. However, since any application for an amendment, renewal, or extension to an existing permit will be considered an application for a new permit, all dischargers will eventually be subject to the same regulatory standards.

NOAA agrees. However, NOAA does not intend to create an entirely new permit process, but to work within the existing process under the MOA described above to reduce delays and prevent unnecessary paperwork.

Existing authorities set up standards, criteria, and discharge requirements. NOAA will work with these authorities within the existing regulatory process under the MOA described above to determine if the standards and criteria are sufficient to protect Sanctuary resources and qualities, and that these standards and criteria are met.

NOAA agrees that by allowing discharges from industrial and municipal sources into coastal waters, water contamination may occur. NOAA's regulations

Comment

may be used for domestic water supply, and such discharge is not currently allowed in other similarly situated areas.

NPDES Permits

NOAA's certification of the NPDES permits should parallel that of the RWQCB and EPA's permitting process, rather than await the completion of the State-EPA permit process.

Sanctuary regulations should be modified to exempt discharges regulated by the NPDES and to allow discharges under the existing RWQCB standards.

The FEIS/MP should discuss how NOAA plans to view NPDES permit renewals. Will new permits be required, or will old permits be recertified?

New wastewater discharges into Sanctuary receiving waters with treatment levels less than secondary treatment should be prohibited.

The regulation prohibiting depositing or discharging of potentially harmful materials is sufficient to exclude the possibility of such pollution, and thus enforcement is unnecessary.

Increased Costs of Improved Treatment

There is concern over the DEIS/MP statement that secondary treatment is a minimum requirement, and that a higher level of treatment is preferred. This suggests that this "preference" could later become the minimum level, and this would substantially impact the construction and operational costs of treatment facilities because they would be required to upgrade from their current secondary treatment level. Specifically, NOAA should address: 1) the

NOAA Response

prohibit discharging or depositing of matter (with certain limited exceptions) outside the Sanctuary that enters the Sanctuary and injures Sanctuary resources or qualities. This prohibition does not apply to dredged material deposited outside the Sanctuary at existing disposal sites of the Golden Gate and will not apply to dredged material deposited outside the Sanctuary at the authorized disposal site that will result from the disposal site study currently underway. See the *Introduction* to this section.

NPDES Permits

NOAA agrees, and will work in parallel with relevant authorities under the MOA described above.

NOAA disagrees. To ensure that a heightened level of protection is given to the resources of the MBNMS consonant with the area's national significance, NOAA intends to regulate all dischargers and depositors, including those with NPDES permits.

NPDES permit renewals will be treated as new permit applications.

NOAA will require secondary treatment or greater, as appropriate, depending on the threat to Sanctuary resources and qualities.

Under certain circumstances discharges of potentially harmful materials into the Sanctuary may still occur, however, they will be regulated by the Sanctuary under the certification of discharge permits through the terms of the MOA described above. Enforcement of certification provisions will be coordinated with existing water quality protection authorities.

Increased Costs of Improved Treatment

For new permits (including permit renewals), NOAA intends to require secondary treatment or greater, as necessary depending on the threat to Sanctuary resources and qualities. If in the future NOAA determines that changes to the Sanctuary regulations relating to increased water quality protection are warranted based on research results or other indicia, NOAA would be required to amend the Sanctuary regulations pursuant to the APA's

Comment

unavoidable adverse impacts of increased energy and chemical use required for higher treatment levels; 2) potential results of dischargers forced to use land disposal schemes rather than ocean outfall schemes; 3) the possibility of higher water and sewer bills resulting from improved treatment levels; and 4) the impacts on municipal dischargers and the limited number of alternatives available to such dischargers.

The environment is equally affected by similar sewage discharges from various sources. Therefore, regulations should be clarified concerning the potential for some cities to discharge into Monterey Bay while others can not.

Comments on the DEIS/MP

Discharge permits should be conditioned, and the FEIS/MP should clearly state that the burden of proof will be on the discharger to show that resources will not be damaged before a permit or certification is given.

A mechanism should be included in the management plan to channel public input into the permitting and certification process.

301(h) waivers should be discussed in the FEIS/MP and prohibited within the Sanctuary.

Information on point discharges from shore should be included in the FEIS/MP to complement the information in the DEIS/MP on length-of-shore outfall.

Fishing and Vessel Operation Discharges

NOAA should clarify the types of discharges allowed during routine fishing and vessel operations. Discharge and depositing exemptions should be reconsidered for fishing and vessel operations because of the harm caused by marine debris.

NOAA Response

notice-and-comment rulemaking process and the requirements of NEPA. NOAA intends to first work with the appropriate local, state and Federal water quality protection authorities utilizing existing mechanisms and the MOA described above to increase the protection of Sanctuary resources and qualities over time from threats posed by diminished water quality.

NOAA will work with existing water quality protection authorities under the MOA described above to determine the most appropriate approach for the protection of Sanctuary resources and qualities. As stated earlier, however, with regard to existing permits the MPRSA only allows NOAA to regulate their exercise, not terminate them.

Comments on the DEIS/MP

NOAA intends to condition discharge permits based on information provided by the discharger. The burden of proof will be on the discharger to establish that Sanctuary resources and qualities will not be injured by the discharge.

The existing permit process provides numerous opportunities for public input. The MOA described above is the mechanism that integrates NOAA into the existing process and provides additional opportunities for public input.

301(h) waivers permit discharge of primary treated sewage effluent into receiving waters and are inconsistent with NOAA's policy to require at a minimum, secondary treatment within the Sanctuary .

This information has been added to the FEIS/MP.

Fishing and Vessel Operation Discharges

The Sanctuary regulations specify the fishing and vessel related activities exempted from the discharge prohibition (15 CFR §944.5 (a) (2) (i) - (iv)). Discharges and deposits from vessels are prohibited except for specific discharges intended to provide for traditional fishing activities, such as fish wastes resulting from traditional fishing operations in the Sanctuary, and for allowed vessel operations in the Sanctuary, namely biodegradable effluents incidental to vessel use and generated by approved marine

Comment

NOAA Response

During routine fishing operations, raw sewage disposal and oily bilge water is common, and such discharges should be more strictly regulated.

Land-based Dischargers

If NOAA is concerned with inland dischargers, such dischargers should be listed and described in the FEIS/MP.

NOAA has neither the staffing nor the experience to regulate land-based non-point dischargers. NOAA should use existing non-point source programs by working with the state and the RWQCB.

Section 104 of the MPRSA has been interpreted to indicate that a point source discharger with a permit authorized under the provisions of the CWA is licensed to discharge certain pollutants into marine waters. If such pollutants result in damage to Sanctuary resources, the discharger would not be liable under Section 104, if in full compliance with applicable permit requirements.

The FEIS/MP should include information on non-point source pollution. This information was not included in the DEIS/MP.

Water Quality Issues

The proposed Sanctuary staff should include a water quality specialist if Sanctuary water quality criteria are to be altered from existing State requirements.

sanitation devices, water generated by routine vessel operations, and engine exhaust. Such discharges are determined to be of minimal threat to the Sanctuary and are important for the safe and effective functioning of fishing and other vessels. Other discharges from vessel operations are prohibited. If in the future NOAA determines that increased protection for Sanctuary resources and qualities from these exempted activities is warranted, changes to the Sanctuary regulations would be undertaken pursuant to the APA's notice-and-comment rulemaking process and the requirements of NEPA.

Bilge pumping of oily wastes and raw sewage disposal are prohibited in the Sanctuary.

Land-based Dischargers

Inland discharge information is provided in the FEIS/MP for dischargers in watersheds adjacent to the Sanctuary.

NOAA intends to work with existing water quality control boards including those governing non-point source pollution. Recent amendments to the Coastal Zone Management Act (CZMA) provide NOAA, EPA, and CZM programs an opportunity to control non-point source pollution.

Section 104 of the MPRSA concerns ocean dredged material disposal, not NPDES permitted point source pollution. The Sanctuary regulations prohibit ocean dredged material disposal activities throughout the Sanctuary, except at existing designated sites. Disposal of dredged material at existing designated sites will be reviewed and regulated in accordance with 15 CFR §944.10 and 944.11.

This information is included in the FEIS/MP.

Water Quality Issues

NOAA agrees and plans to hire a water quality specialist within one year of designation.

Comment

The Marine Sanctuary Administration and the RWQCB should prepare a timetable for preparing and implementing any new water quality criteria. Goals and objectives relating to water quality criteria should be quantifiable and measurable to aid in enforcement.

NOAA has not discussed what, if any, evidence of water quality degradation is necessary in order for additional conditions to be placed on existing permits. NOAA should develop a list of criteria to be used to judge the adequacy of existing permit conditions.

Air Quality Issues

The DEIS/MP did not address air quality issues but should have. One of the greatest threats to the Sanctuary is water-and air-borne pollution from oil operations and other regional development.

Desalination

The DEIS/MP does not adequately address desalination plant regulation.

Desalination may become an important source of fresh water for California. NOAA should analyze the impacts of proposed regulation on future desalination facilities discharging into Sanctuary receiving waters.

Proposed desalination discharges should be examined by the Sanctuary regulatory regime on individual, as well as cumulative, basis.

NOAA Response

NOAA will work with the RWQCB and with all other authorities under the MOA described above to determine appropriate terms and conditions during the review process on each discharge permit. NOAA agrees that goals and objectives should be quantifiable.

Evidence of water degradation and the inadequacy of existing state and Federal authorities to ensure coordinated and comprehensive conservation and management of the area is provided in the FEIS/MP. As part of the ongoing consultation with the existing water quality agencies, NOAA plans to develop specific water quality criteria, based in part of ecosystem and cumulative bases.

Air Quality Issues

No oil and gas activities will be allowed within the Sanctuary boundary. NOAA will work with the California Air Resources Board (CARB) and MMS to determine the level of impacts, if any, of OCS activities and regional development on the resources and qualities of the Sanctuary.

Desalination

NOAA has incorporated a discussion of desalination activities into the FEIS/MP. This section includes potential impacts on the marine environment and environmental consequences of a desalination facility in the region.

NOAA agrees. Currently, the construction and operation of two desalination plants has been proposed for the Sanctuary area, one in Marin County and the other in Monterey County. Existing authorities set up standards, criteria and discharge requirements. NOAA will work with these authorities, within the existing regulatory process, to determine if the standards and criteria are sufficient to protect Sanctuary resources and qualities.

While NOAA recognizes that desalination technologies have the potential to address recent water shortages in the Monterey Bay area, NOAA is concerned with the potential negative effects of these activities individually and

Comment

NOAA Response

Seawater brine discharge created through a desalination process, as well as the installation, construction, and maintenance of the disposal lines, should be under the auspices of a local public agency and allowed in the Sanctuary.

Desalination is an expensive and energy-intensive way of securing fresh water. In addition, the highly saline outflow from these plants is harmful to the marine environment.

cumulatively on the Monterey Bay ecosystem. Proposed desalination activities could be affected by the Sanctuary regulatory regime governing discharges, alteration of the seabed, and the taking of marine mammals, turtles, and seabirds.

NOAA will be acting in an oversight capacity within the existing regulatory framework. NOAA will work with desalination plant owners and operators as well as the relevant management authorities through the Sanctuary's review and regulation procedures provided in 15 CFR §944.11.

NOAA will review specific desalination proposals and analyze information from existing desalination plants in conjunction with relevant authorities including the California Coastal Commission, Monterey Regional Water Pollution Control Agency, RWQCB, and coastal cities. This review will determine if operation of desalination plants is consistent with the protection of Sanctuary resources and qualities. NOAA's review will include, but will not be limited to: 1) pipeline construction on the seabed; 2) degradation of water quality from chemicals in the discharge water; 3) the disposal of heated and concentrated brines and their potential impacts on the resources and qualities of the Sanctuary; and 4) discharge treatment methods utilized to reduce the injury to Sanctuary resources and qualities.