
North Coast Regional Water Quality Control Board

**Response to Written Comments
Waste Discharge Requirements
Order No. R1-2021-0008
National Pollutant Discharge Elimination System (NPDES)
for
Ocean Farms, Inc.**

**Bodega Farms Concentrated Aquatic Animal Production Facility
Regional Water Quality Control Board, North Coast Region
April 15, 2021**

Comments Received

The deadline for submittal of public comments regarding draft Waste Discharge Requirements for Order No. R1-2021-0008, National Pollutant Discharge Elimination System Permit (Draft Permit) for Ocean Farms, Inc. (Permittee) Bodega Farms Concentrated Aquatic Animal Production Facility (Bodega Farms or Facility) was March 3, 2021. Regional Water Board staff (staff) received written comments from Peter Prows, an attorney with Brisco, Iveser, and Bazel LLP, representing the environmental group Concerned Citizens for Estero Americano (Citizens), as well as comments from an interested person. Additionally, staff received verbal comments from Max Delaney from the Greater Farallones National Marine Sanctuary, a part of the National Oceanic and Atmospheric Administration (NOAA). Regional Water Board staff further discussed the topic of comments received and verified that the Permittee did not have any comments on the Draft Permit.

This Response to Comments document includes the comments received from each of these commenters, Regional Water Board staff responses, and staff-initiated changes. This document summarizes comments received, followed by the Staff response. Text added to the Proposed Permit is identified by underline and text to be deleted from the Proposed Permit is identified by ~~strike-through~~ in this document. The term “Draft Permit” refers to the version of the permit that was sent out for public comment. The term “Proposed Permit” refers to the version of the permit that has been modified in response to comments and is being presented to the North Coast Regional Water Quality Control Board (Regional Water Board) for consideration.

A. Briscoe Ivester & Bazel LLP (Citizens) Comments

Comment No. A1: *Citizens has concerns about a proposed future change in the use of and discharge from the Facility. Mr. Gordon, president of Ocean Farms, Inc., has told members of the public that he intends shortly to enter into some kind of business deal with a multinational company, called Urchinomics, to harvest purple sea urchins from the Pacific Ocean and cultivate them on the property using water pumped in from, and discharged back to, the Estero Americano or Pacific Ocean.*

The proposed permit appropriately prohibits “[t]he discharge of waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board”. But Appendix F, section 2.5, also states that “[t]here are no changes in operation of modifications to Facilities planned for the Facility during the anticipated term of this Order which will cause a material change in the volume or quality of discharges from the Facility.” This latter provision causes confusion and appears to be inaccurate.

This statement in Appendix F would be accurate only if Mr. Gordon were to now stipulate that he no longer has any plans for Urchinomics to operate on the site. If Mr. Gordon will not confirm this, then the proposed permit should make clear that it does not apply to urchin-related discharges that might occur in the future. Any urchin-related discharges would require a new permit to cover the new discharge.

Response to Comment A1: The Facility’s Report of Waste Discharge does not indicate any additional species for production at the Facility. Additionally, Regional Water Board staff made inquiries to the Permittee regarding planned changes to the Facility on February 24, 2021 to determine if planned changes were anticipated. The Permittee indicated that they have considered three different tenants for the Facility in the recent past, but that no actions have been taken regarding these future possibilities. The Permittee further clarified that detailed notification on any proposed changes would be provided for the Regional Water Board’s consideration well before making any changes.

Material and substantial alteration or additions to the Facility or permitted activity and would, at minimum, require the Permittee to submit a new report of waste discharge and may result in a permit modification (40 C.F.R. § 122.62(a)(1)). The Permit may otherwise be subject to termination if it is determined that the Permittee failed to disclose fully all relevant facts or misrepresented any relevant facts during the permit issuance process (40 C.F.R. § 122.64).

In effort to provide more clarity, the following modification have been made.

The Proposed Permit has been modified in response to this comment as follows:

1. Order section 6.1.1 has been modified to read as follows:

6.1.1.Federal Standard Provisions. The Permittee shall comply with all Standard Provisions included in Attachment D of this Order.

6.1.1.1. Material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit are cause for permit modification (40 C.F.R. § 122.62(a)(1)).

6.1.1.2. The Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the Permittee's misrepresentation of any relevant facts at any time is cause for terminating a permit during its term, or for denying a permit renewal application (40 C.F.R. § 122.64).

2. Fact Sheet section 6.1.1. has been modified to read as follows:

6.1.1. Federal Standard Provisions (Standard Provision 6.1.1).

Standard Provisions, which apply to all NPDES permits in accordance with 40 C.F.R. section 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 C.F.R. section 122.42, are provided in Attachment D to the Order. The Permittee must comply with all standard provisions and with those additional conditions that are applicable under 40 C.F.R. section 122.42. The rationale for the special conditions contained in the Order is provided in section 6.2, below.

Sections 122.41(a)(1) and (b) through (n) of 40 C.F.R. establish conditions that apply to all state-issued NPDES permits. These conditions must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to the regulations must be included in the Order. Section 123.25(a)(12) allows the state to omit or modify conditions to impose more stringent requirements. In accordance with 40 C.F.R. section 123.25, this Order omits federal conditions that address enforcement authority specified in 40 C.F.R. sections 122.41(j)(5) and (k)(2) because the enforcement authority under the Water Code is more stringent. In lieu of these conditions, this Order incorporates by reference Water Code section 13387(e).

6.1.1.1. Order Provision 6.1.1.1 identifies that material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit are cause for permit modification (40 C.F.R. sections 122.62(a)(1)).

6.1.1.2. Order Provision 6.1.1.2 identifies that the Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time are cause to terminate a permit during its term, or for denying a permit renewal application (40 C.F.R. sections 122.64(a)(2)).

Comment No. A2: *The proposed permit, in section 3.3.7 of Appendix F, "requires compliance with ... other requirements to protect the beneficial uses of waters of the state." On 23 February 2021, I forwarded you copies of letters Citizens sent last December to the State Water Resources Control Board, the California Department of Fish and Wildlife, and the California State Lands Commission (which letters are incorporated here by reference), which each raised concerns about whether*

Urchinomics' proposal complied with all their requirements applicable to waters of the state. None of those agencies have given any assurances to Citizens that Urchinomics' operations would meet all requirements. Before the Regional Water Board issues any permit for urchin-related discharges from the site, it should obtain written assurances from these agencies that all their requirements for protecting the beneficial uses of waters of the state have been met.

Response to Comment A2: Regional Water Board staff acknowledge Citizens concerns regarding this matter but also recognizes that Urchinomics is not the authorized discharger under the Proposed Permit. Until such time that Bodega Farms proposes a change in their operation, no action is required by the Regional Water Board.

The Proposed Permit has been modified as identified in Comment No.1 to address applicable rules regarding potential changes to the Facility or activity.

B. Interested Person Comments

Comment No. B1: *No water has been discharged from the abalone farm in many years. The current operator has an impressive evaporation system in place. Why would the lapsed permit need a discharge component if it is not being used?*

Response to Comment B1: Although Bodega Farms operated over the current permit term without the need for discharge, they anticipate that they may need to discharge when their abalone seed harvest increases. Bodega Farms retains the option to discharge effluent seawater by maintaining coverage under the Permit.

No changes have been made to the permit in response to this comment.

Comment No. B2: *A while back I became aware of the organization Urchinomics through social media, a for profit, international company that was coming to Bodega Bay. Their intent is to harvest purple urchins from our waters and turn them into food product. How does Urchinomics tie into Bodega Farms?*

Response to Comment B2: See Response to Comment No. A1. No further changes have been made to the permit in response to this comment.

Comment No. B3: *It is my understanding that Urchinomics wants to open Estero Americano for water flow. In my opinion, only Mother Nature should have that right. Seems to me forcibly opening the Estero would create imbalance with natural habitats and species.*

Response to Comment B3: Regional Water Board staff acknowledge this concern but also recognize that it is outside of the scope and authority of the Proposed Permit. This permit applies only to the named operator of the Facility and activities described in its application. This permit does not authorize any physical changes to the Estero Americano or activities that may alter the opening of the Estero Americano.

No changes have been made to the permit in response to this comment.

Comment No. B4: *What I would like to see in the renewed permit, spelled out clear as a bell, is that the permit is for red abalone only, and to specifically and implicitly exclude sea urchins from any current or future operation.*

Response to Comment B4: The Draft Permit's effluent limitations (Section 4) are applicable to the discharge of abalone tank rearing water and not other uses or species. The Fact Sheet (Attachment F) of the Proposed Permit clearly indicates that Bodega Farms is an abalone rearing facility in section 1.1, 1.2 and 2. Regional Water Board staff feel that the discharge of waste related to any uses aside from abalone rearing, as designated in the Fact Sheet, would not be considered applicable to this permit. Additionally, Section 5.6 of the Standard Provisions (Attachment D) of the Draft Permit requires the Permittee to give notice to the Regional Water Board as soon as possible of any planned physical alterations or additions to the Facility.

No changes have been made to the permit in response to this comment.

C. NOAA Comment

Comment No. C1: Regional Water Board staff spoke with Max Delaney of the Greater Farallones National Marine Sanctuary regarding the Draft Permit. He indicated that there was interest within his agency to better understand if changes to the Facility, specifically modifications to facilitate the production of purple sea urchins, could be implemented under the permit. More specifically, he inquired if the permit allowed for changes to the Facility's configuration regarding the seawater intake and discharge equipment and location.

Response to Comment C1: The Proposed permit has been modified as identified in the Response to Comment No. A1 to identify applicable rules regarding potential changes to the Facility or permitted activity. No further changes have been made to the permit in response to this comment.

D. Staff Initiated Changes

The following section describes changes made to the Proposed Permit by Staff based on information or considerations of Regional Water Board Staff after the Draft Permit was released for public comment.

Changes to Effluent Limitations – Discharge Point 001 for Settleable Solids

The average weekly effluent limitation for Settleable Solids has been removed from Table 2 of the Proposed Order. During the Order's final review, Regional Water Board staff recognized that Resolution No. 82-34 (attachment G of the Proposed Order) does not include an average weekly effluent limitation for Settleable solids. Resolution No. 82-34 provides an exception to the Ocean Plan requirements for suspended solids and settleable solids and allows for an allowable incremental increase of these constituents above the concentration present in influent water. The 1.5 mL/L Average Weekly limit

included in the Draft Permit is representative of the Ocean Plan requirement and not the applicable exception and was unintentionally included in the Draft Permit.

Table 2 of the Proposed Order has been modified, as follows, to remove the Average Weekly Effluent Limitation for Settleable Solids:

Table 1. Effluent Limitations¹

Parameter	Units	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Oil and Grease	mg/L	25	40	---	---	75
Settleable Solids ⁽²⁾	mL/L	1.0	4.5 ---	3.0	---	---
Total Suspended Solids (TSS) ⁽²⁾	mg/L	8	---	15	---	---
Turbidity	NTU	75	100	---	---	225
pH	standard units	---	---	---	6.0	8.5

Table Notes

1. See Definitions in Attachment A and Compliance Determination discussion in Section 7 of this Order.
2. This limitation represents an allowable incremental increase above the concentration present in the influent water as Monitoring Location INF-001. The concentration of constituents in the influent shall be subtracted from the final concentration for the purpose of applying this effluent limitation.