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## North Coast Regional Water Quality Control Board

**Change Sheet and Supplemental 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**

### **Staff Initiated Changes to Permit**

Late changes to the Proposed Permit were made by Regional Water Board staff on April 12, 2021 to address editorial and typographical errors. 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. Page numbers in parentheses reflect page numbers in the Proposed Order in the Agenda Package. The following are the changes made to the Proposed Order:

**Change No. 1:** Discharge Prohibition 3.5 was unintentionally duplicated as Discharge Prohibition 3.6. This error resulted in incorrect section numbers for the remaining discharge prohibitions within section 3 of the Permit (page 5).

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

1. Order section 3 has been modified to read as follows:

3. **DISCHARGE PROHIBITIONS**
  - 3.1. The discharge of any waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board is prohibited.
  - 3.2. Creation of pollution, contamination, or nuisance, as defined by section 13050 of the Water Code is prohibited.

- 3.3. The discharge of waste at any point not described in Finding 2.2 of the Fact Sheet or authorized by a permit issued by the State Water Resources Control Board (State Water Board) or another Regional Water Board is prohibited.
- 3.4. The discharge of waste to land that is not under the control of the Permittee is prohibited, except as authorized under Section 6.3.6.1 (Solids Disposal).
- 3.5. The discharge of detectable levels of chemicals used for the treatment and control of disease is prohibited.
- ~~3.6. The discharge of detectable levels of chemicals used for the treatment and control of disease is prohibited.~~
- 3.76. The discharge of processing wastes and wastewater is prohibited.
- 3.87. The discharge of waste resulting from cleaning activities is prohibited.
- 3.98. The rate of discharge shall not exceed 450,000 gallons per day (gpd).
- 3.409. The discharge of exotic organisms (non-endemic, non-naturalized plants, animals and microorganisms, including gametes, spores, larvae, and parts of such organisms) is prohibited.
- 3.4410. The discharge of any radiological, chemical, or biological warfare agent into waters of the state is prohibited under Water Code section 13375.
- 3.4211. The bypassing of untreated or partially treated wastes containing concentrations of pollutants in excess of those of 2019 Ocean Plan Tables 3 or 4 is prohibited.

**Change No. 2:** The page numbers in the Fact Sheet, Attachment F, were inadvertently listed in the Table of Attachments as pages F-19 through F-49 and should have been listed as pages F-1 through F-31.

1. The Table of Attachments on page 5 of the Order has been modified to read as follows:

#### TABLE OF ATTACHMENTS

|   |                           |
|---|---------------------------|
| Attachment A - Definitions                      | A-1                       |
| Attachment B - Map                              | B-1                       |
| Attachment C - Flow Schematic                   | C-1                       |
| Attachment D - Standard Provisions              | D-1                       |
| Attachment E - Monitoring and Reporting Program | E-1                       |
| Attachment F - Fact Sheet                       | F- <del>19</del> <u>1</u> |

## Attachment G - RESOLUTION NO. 82-34

G-1

2. The Table of Contents and respective page numbers for the Fact Sheet (Attachment F) of the Order has been modified to indicate the correct page numbers (Pages F-19 through F-49 are now listed as pages F-1 through F-31). Corrections to the Fact Sheet's Table of Contents and page numbers are not shown in this document.

### **Supplemental Response to Comments**

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. A total of three commenters were received and responded to in the initial Response to Comments document.

However, Regional Water Board staff (staff) determined that two additional sets of comments were received prior to this deadline and inadvertently omitted in the initial Response to Comments document. These comments, and the responses are thus provided in this Supplemental Response to Comments. The written comments were received from, 1) Save Our Seashore and, 2) Coastwalk/California Coastal Trail Association. Comments addressed in this Supplemental Response to Comments document are identified as Comments D1 through D3 and E1 through E5 in order to differentiate them from those comments addressed in the initial Response to Comments document (Comments A-1, A-2, B-1 through B-4, and C-1).

This Supplemental Response to Comments document includes the comments received from each of these commenters, Regional Water Board staff responses, and any staff-initiated changes, if applicable. 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.

#### **1. Save Our Seashore Comments**

**Comment No. D1:** *Save Our Seashore discusses their concerns regarding how Bodega Farms is likely to change from a small scale red abalone farm to a much larger purple sea urchin farm and provides a brief description of the sea urchin concern that*

*exists within the California coast and its relationship to sea otters. It is requested that the permit would require any sea urchin farm to switch to self-propagation when sea otters are reintroduced.*

**Response to Comment D1:** The following is the Response to Comment No. A1 included in the initial Response to Comments document.

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).

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

**Comment No. D2:** *Save Our Seashore discusses that the mouth of the Estero Americano has one of the few remaining healthy kelp beds in the area and expresses their concern that urchin farming at this location may risk propagating sea urchins in this area. It is requested that the proposed permit require that any urchin farm discharge is directed to a leachfield and not to surface waters.*

**Response to Comment D2:** See Response to Comment No. A1 presented above in Response to Comment D1.

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

**Comment No. D3:** *Save Our Seashore also identifies that the Estero Americano is part of the Greater Farallones National Marine Sanctuary and that while a small-scale abalone farm may have minimal impact to this area, a larger urchin farm may pose unquantified risks. It is requested that the Proposed Permit be restricted to the current abalone farm and that a new permit should be required if it is transitioned to an urchin farm.*

**Response to Comment D3:** See Response to Comment No. A1 presented above in Response to Comment D1.

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

## 2. Coastwalk/California Coastal Trail Association Comments

**Comment No. E1:** *The intake/discharge valves and pumps are located behind the sandbar of the Estero which now for long periods of the year has a sand bar and remains closed. The 2002 California Water Quality Assessment Report published by the State Water Resources Control Board (SWRCB) listed 199 acres of the Estero Americano and the entire length of Americano Creek as impaired waterbodies due to nutrient pollution from agricultural sources. The Estero Americano is also listed as impaired due to sedimentation/siltation. The Estero Americano provides habitat for many critical or endangered species including the Tidewater Goby *Eucyclobius newberryi*. Impacts to the species and estuarian environment caused by disturbance from the facilities pumps for intake and discharge require further evaluation before the permit is renewed.*

**Response to Comment E1:** The water intake and discharge structures, and their associated equipment related to the Bodega Farms facility remains unchanged from previous and current permit terms, and no modification to this equipment configuration and/or use has been proposed. Regional Water Board staff provided notification to the appropriate agencies as part of this permitting and public notification process and did not receive comments back indicating that existing structures and equipment would need to be further evaluated or modified to allow their continued use. The Proposed Permit does not authorize any alterations to the water intake and discharge structures, or associated equipment. If any changes to the intake and discharge structures are proposed, Bodega Farms will need to obtain all necessary permits and authorizations prior to any changes, which may include submitting a new Report of Waste Discharge and obtaining a new or modified NPDES permit. The Regional Water Board will consider Water Code section 13142.5 to ensure that any discharges that adversely affect areas that produce shellfish, estuaries, wetlands, or other biologically sensitive areas will be improved or eliminated to protect present and future beneficial uses. Further, if the facility is expanded and its operation is subject to Water Code section 13142.5 (b), the facility will need to use the best available site, design, technology and mitigation measures feasible to minimize the intake and mortality of marine life.

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

**Comment No. E2:** *As the mouth of the Estuary is closed for significant portions of the year, restricting tidal exchange, the only way to bring marine water to the location of the valves is by breaching the sandbar at the mouth of the estero which should involve further review from other relevant permitting agencies and proper environmental review.*

**Response to Comment E2:** Bodega Farms maintains an alternative intake water location that draws water from the Pacific Ocean that may be utilized during times when the mouth of the Estero Americano is closed. The Proposed Permit does not authorize any physical changes to the Estero Americano or activities that may alter the opening of the Estero Americano. The Proposed Permit does not affect Bodega Farms' responsibility to obtain any necessary permits and authorizations prior to undertaking

any activities that involve dredging activities or otherwise physically altering the Estero Americano.

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

**Comment No. E3:** *The Estero Americano now borders a National Marine Sanctuary (Greater Farallones National Marine Sanctuary) which has regulations regarding disturbance of the sea floor as well as discharge into marine waters.*

**Response to Comment E3:** See Response to Comment No. E1 above.

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

**Comment No. E4:** *The Estero Americano was also designated as a State Marine Recreational Management Area (SMRMA) in 2009 which prohibits the take of all living marine resources.*

**Response to Comment E4:** The Proposed Permit does not authorize the removal of living marine resources from the Estero Americano. See also Response to Comment No. E1.

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

**Comment No. E5:** *The current owner of the lease has sold part of his lease to Urchinomics which has had numerous articles in major publications such as Forbes Magazine about their plans to cultivate purple sea urchin at the Bodega Farms location. Purple urchins are an invasive species and their cultivation is experimental Further study of impacts of this proposed Urchinomics project at the permit location is needed before permit renewal or a transfer of the lease across species is allowed.*

**Response to Comment E5:** See Response to Comment No. A1 presented above in Response to Comment D1.

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