

**Regional Water Quality Control Board
North Coast Region
Executive Officer's Summary Report
June 17, 2021**

ITEM: 5

SUBJECT: Public Hearing on Order No. R1-2021-0010 to consider adoption of proposed Waste Discharge Requirements for Cold Water Concentrated Aquatic Animal Production Facility Discharges to Inland Surface Waters, Enclosed Bays and Estuaries, General NPDES NO. CAG131015 (Justin McSmith)

BOARD ACTION: The Board will consider adoption of Waste Discharge Requirements Order No. R1-2021-0010 (Hatchery General Order). The Hatchery General Order replaces Order No. R1-20015-0009 (2015 Order). The Order will serve as a General National Pollutant Discharge Elimination System (NPDES) permit for a period of five years allowing year-round discharges to surface water from a cold water concentrated aquatic animal production (CAAP) facility upon enrollment.

BACKGROUND: A CAAP facility is a fish hatchery, fish farm, or other facility which contains, grows, or holds cold water fish species or other cold water aquatic animals including, but not limited to, the Salmonidae family of fish (e.g., trout and salmon) in ponds, raceways or other similar structures. A CAAP facility is defined as a point source that discharges to waters of the United States at least 30 calendar days per year, produces at least 20,000 pounds harvest weight of aquatic animals per year, and feeds at least 5,000 pounds of food during the calendar month of maximum feeding.

In the North Coast Region, the following four CAAP facilities are currently enrolled under the 2015 Order issued by the Regional Water Board to discharge wastewater to waters of the United States: Warm Springs Fish Hatchery, Coyote Valley Fishery Mitigation Facility, Mad River Fish Hatchery, and Trinity River Salmon and Steelhead Hatchery. The Regional Water Board has determined that those four and any potential new CAAP facilities in the North Coast Region are appropriately regulated by a general NPDES permit. General permits may be issued to regulate a category of point sources, such as CAAP facilities, which involve the same or substantially similar types of operations; discharge the same type of wastes; require the same type of effluent limitations or operation conditions; and require similar monitoring. CAAP facilities that discharge to the ocean are not eligible for coverage under the Hatchery General Order.

DISCUSSION: The Proposed Hatchery General Order continues to prescribe technology-based effluent limitations for total suspended solids (TSS) and settleable solids, and pH limitations based upon individual receiving water objectives. The Proposed Hatchery General Order also retains a prohibition from the Basin Plan's Policy on the Regulation of Fish Hatcheries, Fish Rearing Facilities, and Aquaculture Operations (Hatchery Policy) which prohibits the discharge of detectable levels of chemicals used for the treatment and control of disease, other than salt (NaCl).

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In addition to the retention of the above requirements, the Proposed Hatchery General Order requires each CAAP facility operator to comply with the following requirements:

- All enrollees shall submit and implement a Best Management Practices (BMP) plan to prevent or minimize the generation and discharge of wastes and pollutants and ensure disposal or land application of wastes in compliance with applicable solid waste disposal regulations. The Proposed Hatchery General Order allows for existing BMP plans or other manuals to be used or modified in order to comply with this requirement.
- New enrollees shall submit for Executive Officer concurrence a site-specific Chemical Controls, Monitoring and Reporting Plan (Reduction and Verification MRP). The Reduction and Verification MRP must include, at a minimum, (1) an evaluation of controls and alternatives for the reduction of chemical usage at each facility, (2) a plan to collect and analyze site specific effluent for Whole Effluent Toxicity, (3) a plan to collect, analyze, and compare to water quality objectives chemical specific concentrations of antibiotics and other treatments used for the prevention of disease in site specific effluent, and (4) a schedule for implementation.

The Draft Hatchery General Order was released for 30-day public review starting March 2, 2021. Regional Water Board staff received timely comments on the Proposed Hatchery General Order from the existing CAAP facility owners and operators. California Department of Fish and Wildlife (CDFW), which operates Warm Springs, Coyote Valley, Mad River, and Trinity River CAAP facilities, provided 61 comments on the Draft Hatchery General Order. There were no other commenters on the Draft Hatchery General Order. A detailed Response to Comments document is provided.

A main concern expressed by CDFW is the ability for CAAP facilities to comply with the prohibition on discharge of detectable levels of chemicals used for the treatment and control of disease. With improvements to laboratory and field tests, CDFW is concerned with its ability to meet lower detection limits for such chemicals. Thus, it requests effluent and receiving water limitations be established in the General Order in lieu of the prohibition.

The prohibition included in the 2015 Order and retained in the Proposed Hatchery General Order is from the Basin Plan's Policy on the Regulation of Fish Hatcheries, Fish Rearing Facilities, and Aquaculture Operations (Hatchery Policy). Staff does not recommend establishing effluent limitations for chemicals used for the treatment and control of disease. To establish site-specific effluent limitations biotoxicity studies would need to be performed at each hatchery location to determine the varying toxicity level for each chemical and drug applied. In addition, if there were effluent limitations for these constituents, any effluent violation would be considered a Minimum Mandatory Penalty (MMP) of \$3,000 per violation. In lieu of chemical specific effluent limitations and to provide a more attainable level of compliance with the Hatchery Policy, the Proposed Hatchery General Order continues to require chronic toxicity information and calculation of effluent concentrations for all chemicals applied to treat disease.

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Staff acknowledge that the Hatchery Policy prohibition does not necessarily reflect current industry practice. A change to the Hatchery Policy prohibition contained in the Basin Plan would require an amendment to the Basin Plan and would be initiated via the Triennial Review process. Staff acknowledge that review of the Hatchery Policy has not been a high priority for the Regional Water Board. Such a review was not identified or selected as a high priority project under the 2018 Triennial Review process and Staff don't plan to initiate the next Triennial Review process until 2023 at the earliest.

Staff understands CDFW remains concerned with its ability to comply with the Hatchery Policy prohibition. Staff agrees that methodologies for detection have improved dramatically since the Hatchery Policy was first adopted in 1989; and in some cases, a literal interpretation of the prohibition could frustrate the Hatchery Policy's general purpose. However, Staff's position with respect to compliance with the Hatchery Policy prohibition remains the same as stated in 2015. Staff continue to believe that it is reasonable to conclude that the Hatchery Policy is best applied in a manner to prevent discharge of chemicals at levels that (a) would cause toxicity, (b) exceed water quality objectives, or (c) otherwise impair beneficial uses.

During the term of the 2015 Order, each enrollee submitted a Reduction and Verification MRP. The data submitted as part of the Reduction and Verification MRP have shown that there is not reasonable potential for the enrollee's discharge to cause or contribute to toxicity in the receiving waters and staff interpreted these results as compliant with the Hatchery Policy prohibition.

CDFW's comment letter is provided along with Staff's Response to Comments document. The attached Response to Comments document summarizes all changes that have been made in the Proposed Hatchery General Order.

Staff notified CDFW of the proposed changes to the Proposed Hatchery General Order. Staff are scheduled to discuss the proposed changes with CDFW ahead of the June 17, 2021 Board meeting.

RECOMMENDATION: Adopt Order No. R1-2021-0010, as proposed.

SUPPORTING DOCUMENTS:

1. Proposed Order R1-2021-0010
2. Response to Comments
3. Comment Letter from CDFW dated April 1, 2021
Provided to Board Members
(Provided to the public upon request, please email Northcoast@waterboards.ca.gov)
4. Notice of Public Hearing

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