

## CALIFORNIA COASTAL COMMISSION

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RECORD PACKET COPY

**F6a****ADMINISTRATIVE PERMIT****APPLICATION NO:** E-02-003**APPLICANTS:** San Diego Oceans Foundation**PROJECT LOCATION:** San Diego Bay, San Diego County**PROJECT DESCRIPTION:** Install and operate two 18 x 18 x 12 foot grow-out pens for the purpose of rearing and releasing juvenile white seabass as part of the CDFG's Ocean Resources Enhancement Hatchery Program ("OREHP"), moored to a dock at Grape Street Pier.**EXECUTIVE DIRECTOR'S DETERMINATION:** The findings for this determination, and for any special conditions, appear on subsequent pages.**NOTE:** Public Resources Code § 30624 provides that this permit shall not become effective until it is reported to the Commission at its next scheduled meeting. If one-third or more of the appointed Commissioners so request, the Executive Director's permit issuance shall not be effective, and the application shall be set for public hearing at a subsequent Commission meeting.

This permit will be reported to the Commission at the following time and location:

**DATE:** Friday, February 7, 2003  
**TIME:** Meeting begins at 9:00 a.m., Item F6a  
**PLACE:** Hyatt Regency Islandia Hotel & Marina  
1441 Quivira Road  
San Diego, CA 92109  
(619) 224 1234

**IMPORTANT – Before you may proceed with development, the following must occur:**

Pursuant to 14 CCR §13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

**BEFORE YOU MAY PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.**

PETER M. DOUGLAS  
Executive Director

By: \_\_\_\_\_  
ALISON J. DETTMER  
Manager  
Energy and Ocean Resources Unit

**ACKNOWLEDGEMENT OF PERMIT RECEIPT AND ACCEPTANCE OF CONTENTS:**

The undersigned permittee acknowledge receipt of this permit and agree to abide by all terms and conditions thereof.

The undersigned permittee acknowledge that Government Code § 818.4 states in pertinent part that: "A public entity is not liable for injury caused by issuance ... of any permit" applies to issuance of this permit.

Applicant's Signature \_\_\_\_\_  
Date \_\_\_\_\_

**STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**SPECIAL CONDITIONS**

This permit is granted subject to the following special conditions:

1. **Facility Removal.** Within 90 days of project termination, the permittee shall remove all fish, pens grow-out structures, and related materials and equipment.
2. **Facility Purpose.** The permittee shall use the grow-out facility only for the purpose of rearing and releasing of white seabass (*Atractoscion nobilis*) supplied through the Ocean Resources and Enhancement Hatchery Program ("OREHP") of the California Department of Fish and Game ("CDFG").
3. **Compliance with Memorandum of Agreement.** The permittee shall design, construct, operate, and maintain the grow-out facility in strict compliance with all directions of the Joint Panel established under the 1997 Memorandum of Agreement ("MOA") by and between the California Coastal Commission, the CDFG, the Ocean Resources Enhancement Advisory Panel, and the Southern California Edison Company, including those specified in the OREHP *PROCEDURES MANUAL FOR THE GROWOUT OF JUVENILE WHITE SEABASS*. The directions and provisions of the MOA and the Procedures Manual are incorporated herein by reference as though set forth in full and are made a part of this permit.
4. **Maintenance and Cleaning of Grow-out Facility.** The permittee shall use and maintain the grow-out facility in a manner that protects localized water quality, benthic habitat,

and human health. Maintenance measures shall include regular cleaning of the pens to remove excess food, and diseased and parasite infested and deformed fish. Diseased, parasite infested, and deformed fish shall be destroyed and disposed of in a permitted upland solid waste disposal facility. All below water pen netting shall be regularly cleaned to prevent fouling. Damaged netting shall be immediately repaired or replaced to ensure the integrity of all enclosures. Any unplanned release or escape of fish shall be reported immediately to the Executive Director of the Coastal Commission (hereinafter "Executive Director") and the CDFG.

5. **Fish Stock Health.** The pens shall be sterilized prior to restocking following the infestation of disease or parasitism resulting in a loss equal to or greater than 50 percent of the reared stock. Any major loss of rearing fish (50% or greater) shall be reported immediately to the Executive Director and the CDFG.
6. **Compliance with Release Plan.** The permittee shall release the pen-reared white seabass in strict compliance with the release plan prepared by the Joint Panel which is incorporated herein by reference as though set forth in full and is made a part of this permit. All white seabass shall be tagged prior to their release. The permittee shall not release any batch of fish until it has been inspected by a CDFG biologist or a qualified biologist approved by the Executive Director. Fish that the biologist determines to be diseased, parasite infested, or deformed shall not be released.
7. **Monitoring Reports.** The permittee shall submit semi-annual monitoring reports to the CDFG/OREHP and the Executive Director. The first report shall be submitted within 180 days of the issuance of this permit. The monitoring reports shall include accurate records of: (1) the number of white seabass received, tagged, and released; (2) the mortality rate; (3) the time and location of release of all reared fish; and (4) any and all additional data required by the Joint Panel for monitoring operation of the grow-out facility for environmental degradation. The permittee shall promptly correct any incompleteness or inadequacy the Executive Director finds in the submitted data. If the Commission, after consulting with the Joint Panel determines that operation of the grow-out facility is causing significant environmental degradation, including genetic degradation, the Commission may order modification or cessation of the operation of the facility to abate the degradation.
8. **Permit Amendment.** If the MOA described in Special Condition 3 should be terminated, the permittee shall be required to obtain an amendment to this permit to continue operations. The permit amendment request shall demonstrate how the permittee shall provide an equivalent level of genetic quality control and monitoring for environmental degradation as is provided through the MOA.

## **1.0 EXECUTIVE DIRECTOR'S DETERMINATION (continued)**

The Executive Director hereby determines that the proposed development is a category of development which, pursuant to PRC § 30624, qualifies for approval by the Executive Director through the issuance of an administrative permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act.

## **2.0 FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION**

### **2.1 Project Location and Description**

The San Diego Oceans Foundation proposes to install and operate two 18 x 18 x 12 foot grow-out pens for the purpose of rearing and releasing juvenile white seabass as part of the California Department of Fish and Game's ("CDFG") Ocean Resources Enhancement Hatchery Program ("OREHP"). The pens will be secured in position with dock line to cleats bolted to a floating dock at the foot of Grape Street Pier in San Diego Bay (See Exhibit 1, Project Location). Each grow-out pen will be able to hold up to 17,000 fish at any one time.

Fish feeding will occur by automatic feeder according to a schedule determined by fish response. The time and duration of the feedings can be adjusted to account for fish size, quantity and water temperature. The pen floats and nets will be cleaned regularly to scraping off fouling organisms. Fish and food stocks will be monitored daily, and any evidence of ill health will be reported to the project supervisor.

Once the fish reach a size of 10-12 inches, they will be netted and counted. Fish releases into San Diego Bay will occur every three to four months each year as determined by OREHP. The maximum yearly total release from both pens will be approximately 136,000 fish.

### **2.2 California Department of Fish and Game's ("CDFG") Ocean Resource Enhancement and Hatchery Program ("OREHP")**

The proposed fish pens are part of a larger endeavor to produce and release hatchery-reared fish in the ocean waters off of southern California. The overall project is coordinated by the CDFG's OREHP. The OREHP program was created by state legislation (Fish and Game Code § 6592) in 1983, extended for an additional ten years in 1992, and was extended indefinitely in 2001 by Senate Bill 58-Alpert (Ch. 368, Stats. 2001). The purpose of the program is to support research into the artificial propagation, rearing, and stocking of marine finfish species that have a high sport and commercial fishing value, in the ocean waters off southern California. Marine fish hatcheries are considered experimental, and OREHP has had successes as well as failures with the artificial propagation and small-scale rearing of white seabass. The OREHP is self-supporting, funded by a tax on fishing licenses. An advisory panel, the Ocean Resources Enhancement Advisory Panel, counsels the CDFG on funding and policy decisions for the OREHP.

The OREHP has targeted white seabass for artificial propagation, rearing and release due to the decline in the wild population and fish size since the early 1900s. An analysis of commercial boat catches indicated a decisive decline in the white seabass stock between 1918 and 1928. Later studies conducted between 1951-60 and 1973-84 indicated that the population might have stabilized at the level found in 1960. This equilibrium is at a much lower level than the historic white seabass population.

### **2.3 Prior White Seabass Grow-out Projects Approved by the Coastal Commission**

In March 1994, the Coastal Commission approved a coastal development permit ("CDP") for an experimental hatchery (CDP No. 6-93-113) capable of producing 450,000 juvenile white seabass per year for release. White seabass are currently cultured at a hatchery administered by Hubbs Sea World Research Institute in Carlsbad under contract to the OREHP.

A condition of the CDP for the San Onofre Nuclear Generating Station, CDP No. 183-73, required Southern California Edison Company to contribute \$1.2 million toward the construction and evaluation of the fish hatchery, as a part of its mitigation package. Action by the Coastal Commission in April 1997 on the SONGS permit added \$3.6 million in mitigation funds to the OREHP account and these monies were used for additional hatchery construction, build-out and operating expenses. Pen-rearing facilities such as the proposed grow-out pens are preferred by OREHP as the grow-out method for the white seabass propagated by the hatchery.

Since 1993, the Coastal Commission has permitted a total of ten OREHP white seabass grow-out projects (six regular permits and four amendments to previous permits), and the Executive Director issued five administrative coastal development permits, for a total of fifteen OREHP project permits in twelve locations. (See Table 1, next page.) All of the white seabass grow-out facilities are located along the southern California bight in the jurisdictions of the City of Santa Barbara, the City of Newport Beach, City of Avalon, County of Los Angeles, the City of Marina del Rey, the City of Redondo Beach, the City of Oxnard, the City of Huntington Beach, City of Carlsbad, City of Dana Point, the City of San Diego, and the City of Long Beach.

**Table 1: OREHP White Seabass Fish Rearing Projects**

CDP No.	Permittee	Location
E-93-01	Pacific Fisheries Enhancement Foundation	Newport Bay
E-93-02	Marina Del Ray Anglers	Marina Del Ray
E-93-03	King Harbor Fisheries Management	King Harbor, Redondo Beach
E-94-5	Dana Point Fisheries Enhancement Program	Dana Point Harbor
E-94-15	Santa Barbara Salmon Enhancement Association	Stearns Wharf, Santa Barbara Harbor
E-94-15-A1	Santa Barbara Salmon Enhancement Association	Stearns Wharf, Santa Barbara Harbor
E-94-16-A (formerly 4-92-14)	United Anglers of California	Channel Islands Harbor, Oxnard
E-95-4	Catalina Island Seabass Program	Catalina Island Harbor
E-95-4-A1	Catalina Island Seabass Program	Catalina Island Harbor
E-96-18 *	Harbor Ocean Preservation Enhancement	Huntington Harbor
E-96-19 *	San Diego Oceans Foundation	Mission Bay
E-98-5 *	Alamitos Bay Fishery Enhancement Project	Alamitos Bay, Long Beach
E-98-5-A1	Alamitos Bay Fishery Enhancement Project	Alamitos Bay, Long Beach
E-00-020*	Project Pacific and CDFG	Mission Bay
E-02-010*	Hubbs-Seaworld Research Institute	Carlsbad, Agua Hedionda Lagoon

\* Denotes administrative permits issued by the Executive Director.

## 2.4 Memorandum of Agreement

In April 1994, the Executive Director of the Coastal Commission signed a Memorandum of Agreement ("MOA") with the CDFG, the Ocean Resources Enhancement Advisory Panel and the Southern California Edison Company. The MOA was subsequently revised in 1997 (Exhibit 2). The MOA established the roles and responsibilities of the various parties in the construction and evaluation of a marine fish hatchery and related grow-out facilities. The MOA also required the CDFG to prepare a Comprehensive Hatchery Plan and a Grow-Out Facilities Procedures Manual.

A Joint Panel made up of representatives of each party to the MOA (with the exception of Southern California Edison, which may participate in the Joint Panel meetings as an observer only), plus the National Marine Fisheries Service and the University of California, oversees evaluation of the success of the hatchery and development and implementation of a genetic quality assurance program. **Special Condition 3** requires the permittee to operate the grow-out facility in compliance with the directions of the Joint Panel as described in that condition.

The MOA also includes provisions to limit the potential environmental degradation associated with the hatchery and grow-out facilities. Accordingly, if the Executive Director finds that the hatchery or any particular grow-out facility is causing significant environmental degradation, including genetic degradation, the Executive Director may recommend to the Coastal Commission, and the Coastal Commission may require, that the operation of the facility may be modified, or halted to abate the degradation. Modifications to existing facilities or their operations may require a permit amendment from the Coastal Commission.

**Special Condition 8** requires that if the MOA is terminated, the permittee must obtain a permit amendment or a new permit to provide the equivalent level of genetic quality control and environmental degradation monitoring as is guaranteed via the MOA. This condition is necessary to ensure that, in the absence of the MOA and the related Joint Panel, the grow-out facility will continue to be operated in conformance with the Chapter 3 policies of the Coastal Act.

## 2.5 Grow-Out Facility Procedures Manual

The MOA requires the preparation of a Grow-Out Facility Procedures Manual to provide guidance for the individual grow-out facility operators. The CDFG has completed the manual and distributed it to the grow-out facility operators. The Grow-Out Facilities Procedures Manual provides guidance in the following areas: (1) the application process; (2) site selection; (3) pen design and construction; (4) preparation for receiving fish; (5) feeding; (6) monitoring, recognition, and treatment of diseases; (7) procedures for releasing fish; and (8) record keeping procedures. **Special Condition 3** requires the permittee to adhere to the standards and procedures of the Grow-Out Facilities Procedures Manual, and incorporates the directions and provisions of the manual as a part of this permit.

## 2.6 Coastal Act Issues

### 2.6.1 Marine Resources

Coastal Act § 30230 states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Coastal Act § 30231 states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and*



*substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The potential impacts associated with the fish grow-out pens are impacts to water quality and benthic habitat, and degradation of the genetic diversity of wild white seabass populations.

#### **2.6.1.1 Water Quality and Benthic Habitat**

Water quality may be impacted in several ways. Not all food distributed to the fish will be eaten; some will escape from the pens through the netting and fall to the seafloor. Fish feces also escape and fall to the seafloor. In OREHP's experience, however, neither of these actions have significant water quality or benthic habitat impacts. The Hubbs Sea World Research Institute has monitored rearing facilities in the past to determine if there was any buildup of organic material on the seafloor through visual observation by divers, but the area under rearing facilities has remained clear of either excess food or fecal material. In most areas tidal flushing is a significant factor in preventing buildup under the pens; however, even in areas of minimal tidal flushing, no buildup of organic material has ever been observed.

Rearing facility operators are instructed to feed fish at set rates to minimize excessive food from escaping the pens. The rate of feeding is determined based on water temperature and the size of the fish. In addition, **Special Condition 3** requires that the grow-out facility be operated and maintained in strict compliance with the MOA and the OREHP Procedures Manual for the Growout of Juvenile White Seabass, which includes procedures and monitoring for maintenance of water quality. **Special Condition 4** requires that the grow-out facility be operated and maintained in a manner that protects localized water quality, benthic habitat and human health. Maintenance procedures shall include regular cleaning of the pens to remove excess food. All below water pen netting shall be regularly cleaned. **Special Condition 5** requires that pens be sterilized prior to restocking if disease or parasitism result in a 50% or greater fish loss. In order to prevent the creation of marine debris, **Special Condition 1** requires that all pen rearing structures and materials be removed within 90 days of project termination.

The MOA between the Coastal Commission, CDFG, the Ocean Resources Enhancement Advisory Panel, and Southern California Edison Company also includes provisions to limit the potential environmental degradation associated with the hatchery and grow-out facilities. Accordingly, if the Commission finds that the facility is causing significant environmental degradation, including genetic degradation, the Commission can require modifications to or the cessation of the hatchery or grow out facility operation to abate the degradation.

#### **2.6.1.2 Genetic Diversity**

There is potential for a decrease in the genetic diversity of the wild seabass population due to interbreeding from a small population of broodfish. In order to prevent genetic mutations and loss of genetic diversity, OREHP will follow the procedures outlined in the "Comprehensive Hatchery Plan for the Enhancement of White Seabass" to assure that genetic diversity is preserved. OREHP will continue to obtain broodfish from the wild and rotate in at least 10% of

the fish on a yearly basis. OREHP will continue to genotype the broodfish and progeny to ensure that multiple fish are contributing to each spawn.

In addition, to ensure genetic diversity and genetic quality of the fish, **Special Condition 2** restricts the use of the grow-out facility to rearing white seabass supplied from the OREHP white seabass hatchery. **Special Condition 8** requires that if the MOA is terminated, the permittee must obtain an amendment to this permit to continue operations, and the permit amendment request must demonstrate how the permittee would provide an equivalent level of genetic quality control and monitoring.

### 2.6.1.3 Conclusion

Thus, the Executive Director finds that the proposed project as conditioned "shall be carried out in a manner that will sustain the biological productivity of coastal waters and that maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes," as required by Coastal Act § 30230. The Executive Director also finds the project as conditioned will be carried out in a manner such that the "biological productivity of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained," as required by Coastal Act § 32031. The project is therefore consistent with Coastal Act §§ 30230 and 30231.

### 2.6.2 Cumulative Impacts

Coastal Act § 30250(a) states in part:

*New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

Coastal Act § 30105.5 defines the term "cumulatively" as it is used in Coastal Act § 30250(a) to mean that "the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

Since 1993, the Commission or the Executive Director has approved a total of fifteen permits of various types for fish rearing projects associated with the CDFG's OREHP in twelve grow-out locations (See Table 1). All of the white seabass grow-out facilities are located along the southern California bight in the local jurisdictions of the City of Santa Barbara, the City of Newport Beach, City of Avalon, County of Los Angeles, the City of Marina del Rey, the City of Redondo Beach, the City of Oxnard, the City of Huntington Beach, City of Carlsbad, City of Dana Point, the City of San Diego, and the City of Long Beach.

Cumulative direct releases from the hatchery and grow-out facilities have totaled 625,923 white seabass from 1986 to the end of 2002. Taking into account typical mortality rates, CDFG

estimates that there were 50,000 OREHP-produced adult white seabass in the wild at the end of 2002. During calendar year 2002, 53,084 juvenile white seabass were transferred to grow-out facilities and 40,253 were ultimately released into the open ocean. In addition, the hatchery directly released approximately 83,785 fish in 2002. The OREHP is currently authorized to release a maximum total of 125,000 juvenile white seabass per year from all fish rearing facilities. If hatchery production remains at current levels, it would be possible to produce more than 200,000 fish for transfer to grow-out facilities. Before more than 125,000 juvenile white seabass can be released annually, the Joint Panel must recommend that the maximum total release number be increased, based upon completion of certain program benchmarks contained in the MOA. The CDFG may then request the Executive Director to approve an increase in the maximum total release number.

A significant expansion in the grow-out facility operation has the potential to result in food and/or animal detritus which may add to the cumulative marine impacts that already exist in developed harbor settings. However, cumulative water quality impacts to the local marine environment resulting from the use of the proposed floating fish pens are not expected to be significant. The relatively small numbers of seabass reared and released from the grow-out facility, local tidal flushing action, and the facility maintenance requirements contained in the Growout Procedures Manual and **Special Condition No. 4** should reduce the potential cumulative impacts to marine resources to insignificant levels.

The impact of hatchery-propagated fish on the genetic diversity of wild populations is of particular concern. The cumulative impacts associated with extensive marine finfish mariculture operations could potentially be severe and irreversible, and have the potential to result in cumulative impacts on the wild white seabass population. A loss of genetic diversity has the potential of reducing the adaptability of the natural populations in dealing with changes in environmental conditions, such as global climate changes, or other human induced impacts.

To assist in the evaluation of cumulative impacts associated with hatchery propagated and pen-reared fish on the native white seabass population, the permittee is required by **Special Condition 6** to tag all fish prior to release and to comply with the release plan prepared by the Joint Panel, which may require transporting the pen-reared white seabass to another location for release. **Special Condition 7** requires the permittee to maintain accurate records of the rearing facility's operational practices and the release of fish. Additionally, **Special Condition 4** requires the permittee to prevent the premature release of untagged fish and to report any accidental release of untagged fish to the Executive Director. The tagging and record keeping requirement will also ensure the integrity of CDFG's future evaluation of the OREHP, and allow for an assessment of whether the release of hatchery propagates are adversely affecting the genetic diversity of the white seabass population.

For the reasons described above, the Executive Director finds that the proposed project, as conditioned, will not have significant adverse cumulative effects and therefore is consistent with the Coastal Act §30250(a).

## 2.7 California Environmental Quality Act ("CEQA")

The Coastal Commission's permit process has been designated by the State Resources Agency as the functional equivalent of the California Environmental Quality Act ("CEQA") environmental review process. Pursuant to Section 21080.5(d)(2)(A) of the CEQA and Section 15252(b)(1) of Title 14, California Code of Regulations, the Commission may not approve a development project "if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment." The Executive Director finds that only as conditioned are there no feasible less environmentally damaging alternatives or additional feasible mitigation measures that would substantially lessen any significant adverse impact which the activity may have on the environment, other than those identified herein. Therefore, the Executive Director finds that the project as fully conditioned is consistent with the provisions of the CEQA.

## **APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

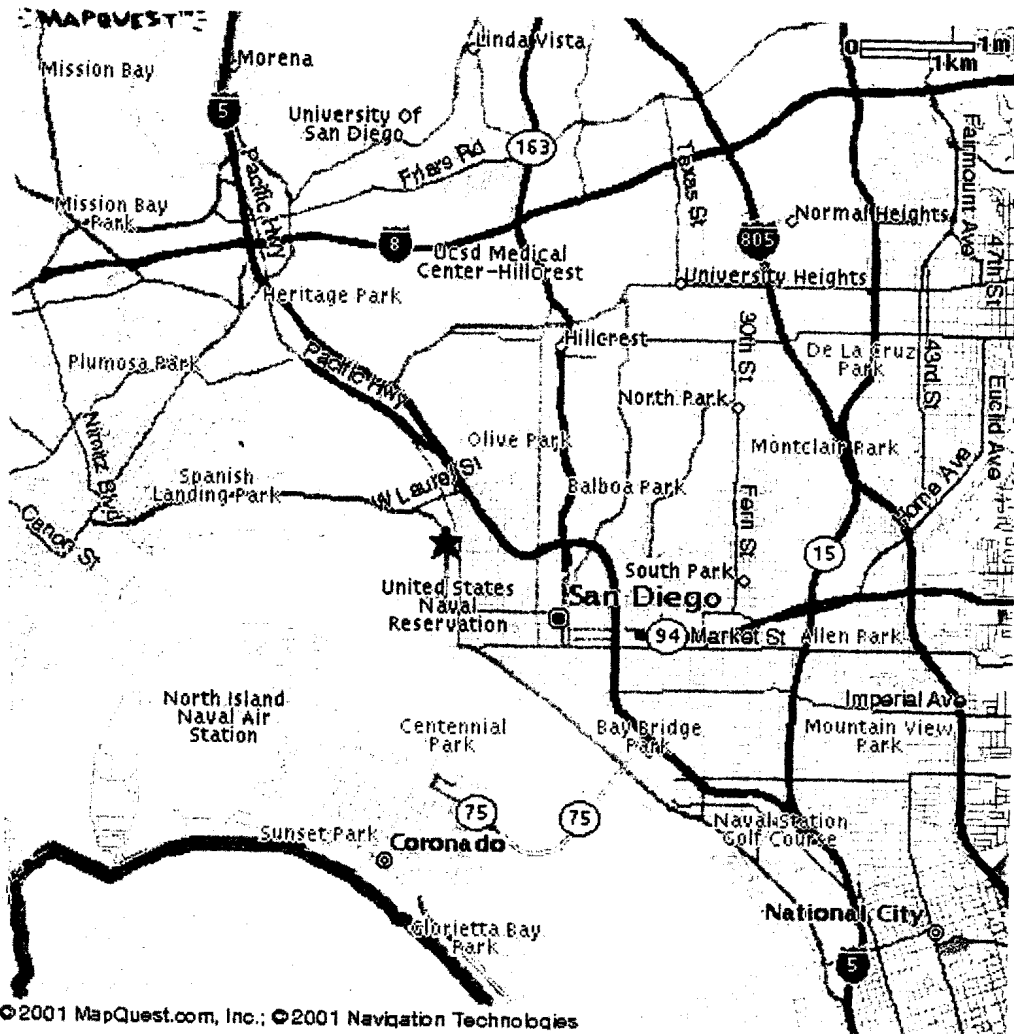
### ***Coastal Development Permit Application Materials***

Application for Coastal Development Permit E-02-003 dated January 18, 2002.

### ***Agency Permits and Letters***

Letter from John Robertus, Regional Water Quality Control Board, San Diego Region, to Kai Schumann, dated October 10, 2002.

100 Grape St  
San Diego, CA  
92101-8301, US



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EXHIBIT NO. 1
APPLICATION NO.
E-02-003
Project Location

EXHIBIT NO. 2
APPLICATION NO.
E-02-003
1997 OREHP MOA

**Memorandum of Agreement**  
**for the**  
**State of California's**  
**Ocean Resources Enhancement and Hatchery Program**  
**between the**  
**California Coastal Commission**  
**California Department of Fish and Game**  
**Ocean Resources Enhancement Advisory Panel**

This Memorandum of Agreement (Agreement or MOA) is entered into between the California Coastal Commission (Coastal Commission), California Department of Fish and Game (DFG), and Ocean Resource Enhancement Advisory Panel (OREAP), also referred to as the Parties.

The Parties agree as follows:

**1.0 BACKGROUND AND PURPOSE**

On April 9, 1997, the Coastal Commission amended Coastal Development Permit 6-81-330-A (formerly 183-73) (the Permit) for the San Onofre Nuclear Generating Station (SONGS) to require Southern California Edison Company (SCE), as majority owner and operating agent, to provide \$3.6 million (plus accrued interest) for the mariculture/marine fish hatchery program operated by the State of California through the Ocean Resource Enhancement and Hatchery Program (OREHP). These funds are in addition to the \$1.2 million previously provided by SCE in 1994 as required by the March 1993 amendment to the Permit. The purpose of this new funding requirement is to compensate in part for losses to the kelp bed community that the Coastal Commission found to be caused by the operation of SONGS Units 2 and 3.

Since 1993, Hubbs-Sea World Research Institute (HSWRI), pursuant to a contract with DFG, has constructed a pilot production hatchery at Agua Hedionda Lagoon, located in Carlsbad. The current facility consists of the main hatchery building and a series of eight raceways. Within the hatchery are pools to hold 200 broodstock, incubators to hold eggs and larval fish, and tanks to grow the fish to three inches, at which time they are transferred to the pen grow-out facilities. The raceways are used for holding fish before their transfer to the grow-out facilities.

The hatchery has been operating at limited capacity for over two years. To bring the facility to full production, additional equipment is needed to: enhance water quality and flow; better control environmental conditions within the hatchery and raceway system; expand and enhance food production and distribution to the fish; facilitate coded wire tagging of juvenile white seabass; and increase reliability of the tagging

and recovery process. In addition, four cage systems, to be placed in Agua Hedionda Lagoon or along the open coast, are needed to assure adequate grow-out capability.

HSWRI will continue to operate the hatchery under contract to DFG. HSWRI is responsible for all hatchery operations, including bringing the facility to full production. When the hatchery is operating at full capacity, production should reach 400,000 juvenile white seabass per year. Reaching full hatchery production is expected occur within a year of receiving the \$3.6 million.

The purpose of this Agreement is to ensure that the monies SCE is required to provide by Condition C of the Permit are spent on mariculture/marine fish hatcheries under OREHP consistent with the intent of Condition C of the Permit. The pertinent section of Condition C, Section 3.0, Funding Requirement for Mariculture/Fish Hatchery Program, is attached as Exhibit 1.

## **2.0 PARTIES TO THE MOA**

The Parties to this Agreement are:

- (1) the California Department of Fish and Game, which is the principal state agency responsible for the establishment and control of fishery management programs, including the California Ocean Resources Enhancement and Hatchery Program (OREHP);
- (2) the Ocean Resources Enhancement Advisory Panel established by the Legislature to assist the DFG in establishing policy and direction for OREHP; and
- (3) the California Coastal Commission, which is a state coastal management and regulatory agency with authority over the development and use of the California coast and coastal waters.

## **3.0 CONTINUATION OF April 6, 1994 MOA**

The Memorandum of Agreement for the State of California's Experimental Marine Fish Enhancement Hatchery between the Parties and SCE, effective April 6, 1994 (the 1994 MOA), established terms for expenditure of the \$1.2 million previously provided by SCE and for DFG funding of a genetic quality assurance program and evaluation program. The provisions of the 1994 MOA remain in effect. A copy of the 1994 MOA is attached as Exhibit 2.

## **4.0 FUNDING**

Upon receipt of the \$3.6 million plus accrued interest provided by SCE in accordance with the Permit, DFG shall deposit the monies into its interest-bearing OREHP dedicated account and assign the monies a separate Program Cost Account code (the Fund). The Fund shall be held in accord with all applicable State statutes, regulations, and administrative requirements.



The Fund shall be expended only for the purposes described in section 5, unless those purposes are modified in writing and agreed to by all Parties to this Agreement.

## **5.0 PROJECT DESCRIPTION**

Monies from the Fund shall be spent on the HSWRI hatchery program at Agua Hedionda Lagoon as further described in the Comprehensive Hatchery Plan and SONGS Budget, incorporated herein and attached as Appendix A. The three primary components for expenditure are: (1) repayment of the debt for the hatchery construction; (2) cost of additional equipment and resources needed to achieve full operating capacity of the hatchery, i.e., "hatchery build-out"; and (3) hatchery operating expenses for approximately eight years. In addition, funds may be used to cover administrative overhead, which shall not exceed 5% of expenditures.

The identified costs of these components are estimates and are not intended to commit an exact dollar amount to that component.

### **5.1 Hatchery Construction Debt Repayment**

Initial construction of the experimental marine fish hatchery for white seabass, completed during the spring of 1997, resulted in a construction debt of \$593,760. The Fund will be used to retire the debt.

### **5.2 Hatchery Build-Out**

Approximately \$816,800 from the Fund will be used for the planned build-out of the hatchery. The build-out will:

- (1) upgrade the raw seawater delivery system to increase flow, improve physical water quality and decrease pathogens;
- (2) increase food production (plankton) for larval fish;
- (3) increase broodstock holding capabilities;
- (4) secure an emergency power supply (generator);
- (5) expand data logging and computer capability for increased monitoring of fish health;
- (6) increase coded-wire tagging and fish counting ability;
- (7) expand vacuum degassing system;
- (8) increase hatchery capability to grow-out fish to release size; and
- (9) increase fish transporting capability.

### **5.3 Hatchery Operating Expenses**

The remaining funds (approximately \$2,189,440 plus all accrued interest) shall be used for hatchery operating expenses, including genetic evaluation, experimental augmentation, and fish hatchery personnel, as described in Appendix B, incorporated herein and attached hereto.

## **6.0 PLANNING AND OVERSIGHT**

The Joint Panel formed pursuant to section 4.1 of the 1994 MOA shall have the planning and oversight responsibilities for the projects set forth in section 5 of this Agreement. The responsibilities and procedures shall be as follows:

### **6.1 Responsibilities**

The Joint Panel shall have the following general oversight responsibilities to ensure development of this hatchery and grow-out facilities: (1) develop and oversee the evaluation and genetic quality assurance programs, (2) develop Requests for Proposals (RFPs) or contracts to conduct the programs, consistent with requirements of State law and all relevant provisions of this Agreement, (3) make recommendations for contractor selections to the OREAP and Director of DFG, (4) make recommendations for development of contract terms, and (5) oversee and evaluate contractor performance in carrying out the evaluation and genetic quality assurance programs.

### **6.2 Procedures**

The Joint Panel shall select its chairperson from among its members, and shall make decisions by a majority vote of all panel members entitled to vote. The Joint Panel shall meet as often as necessary, but at least twice a year.

## **7.0 ENVIRONMENTAL QUALITY**

Permits issued by the Coastal Commission, in connection with the hatchery project, may require careful monitoring of the hatchery and grow-out facilities to ensure they are not causing significant environmental degradation. The Joint Panel shall review the potential causes of environmental degradation from the hatchery and grow-out facilities, and develop a monitoring program to be implemented by the fish hatchery operator and grow-out facility operators. In addition, the Joint Panel shall make recommendations to DFG and OREAP as to whether additional applied ecological studies should be conducted to ensure adequate monitoring, or to develop methods to reduce or eliminate the potential causes of degradation.

In carrying out the projects set forth in section 5 of this Agreement, the hatchery contractor must satisfy the waste discharge requirements of the appropriate Regional Water Quality Control Board, adhere to the standards set forth in the Hatchery Plan, and comply with the requirements of the Joint Panel with respect to the evaluation program, the genetic quality assurance program, and the environmental monitoring program, implemented pursuant to the requirements of the 1994 MOA. Managers of the grow-out facilities must comply with the requirements of the Joint Panel with

respect to the evaluation program, the genetic quality assurance program, and the environmental monitoring program, and follow the Grow-Out Facility Procedures Manual contained in the 1994 MOA.

If, after consulting with the Joint Panel, the Executive Director of the Coastal Commission determines that the operation of the hatchery or of a particular grow-out facility is causing significant degradation of the environment, the Executive Director may recommend to the Coastal Commission, and the Coastal Commission may require, that operation of the facility be modified, or halted to abate the degradation. The Parties agree to take whatever action is necessary and appropriate to enforce the Coastal Commission decisions.

## **8.0 CONTRACTING PROCEDURES**

### **8.1 Requests for Proposals**

The Joint Panel shall develop Requests for Proposals (RFPs) according to the requirements of the State Administrative Manual (SAM) Sections 1200-1290 and 8752, as applicable, and DFG contract procedures. These procedures will be provided to the Joint Panel by DFG.

### **8.2 Selection of Contractors**

The Director of DFG shall select contractors in accordance with the requirements of SAM Sections 1200-1290 and 8752, as applicable. Contractors are subject to the competitive bid requirements of SAM unless otherwise exempted. The Director of DFG shall be guided by the Joint Panel's recommendation and advice in selecting contractors. If the Director of DFG does not select a contractor recommended by the Joint Panel, the Director of DFG shall provide the Joint Panel with a written explanation of the reason for the different selection. The Parties agree that these contracts will be let by the DFG Director pursuant to SAM and the Public Contracts Code.

### **8.3 Preparation of Contracts**

The DFG shall prepare contracts according to SAM Sections 1200-1290 and 8752. All contracts are subject to approval by the Department of General Services, unless otherwise exempted by State law.

### **8.4 Change of Contractors**

If the project is not terminated, but the Joint Panel determines that a new operations contractor is required, sections 8.1 to 8.3 shall apply to the new operations contractor.

## **9.0 FINANCIAL RECORDS AND ACCOUNTING**

The DFG, OREAP, and their contractors must follow Generally-Accepted Accounting Procedures (GAAP), and must maintain financial management, accounting systems, and procedures which provide for (1) accurate, current and complete disclosure of all financial activity related to the Fund, (2) effective control over, and accountability for

all monies, property and other assets related to the Fund, (3) comparison of the Fund's actual outlays and budgeted amounts, and (4) accounting records for the Fund supported by source documentation. Semi-annual financial reports showing current and cumulative financial activity of the Fund must be provided to the Joint Panel. All records pertaining to the Fund must be available at any time for examination by the Joint Panel.

The DFG, OREAP, and their contractors shall retain all pertinent books, documents and papers, including financial transactions and supporting documents, and policies and procedures for the general accounting system, internal controls, and management practices for a period of three years following the date(s) of all final payment(s) from the Fund.

Any of the Parties can request that an audit be conducted at its own expense by an independent, certified public accountant. Copies of the audit report(s) shall be provided to all Parties to this Agreement.

#### **10.0 RIGHTS IN DATA**

All data, including, but not limited to, reports, drawings, blueprints, technical information, financial information, and contracts, resulting from the implementation of the Agreement shall be the joint property of all Parties to this MOA. Notwithstanding the foregoing, any Party to the Agreement, or to a contract prepared thereunder, may use the data for its own purposes, including publication, provided a statement is included with each publication of the data that the views expressed are those of the individual party alone, and not of the other Parties.

#### **11.0 DISPUTE RESOLUTION**

A failure on the part of any of the Parties to carry out the terms of the Agreement shall result in the following process. First, the party that believes another party is failing to carry out the terms of the Agreement shall present the problem to the joint Panel for resolution. If the Joint Panel cannot resolve the issue to the satisfaction of the Party, the Party may bring the issue to the Executive Director of the Coastal Commission and the Deputy Director for Fisheries of the DFG, who shall jointly try to resolve the problem. If the Executive Director of the Coastal Commission and the Deputy Director for Fisheries of the DFG cannot resolve the issue, the matter shall be referred to the Secretary for Resources for resolution.

#### **12.0 MODIFICATION**

This Agreement may be amended only in a writing executed by all of the Parties.

## 13.0 TERMINATION

### 13.1 Initial Term

This Agreement shall be effective upon execution by all Parties, and shall continue in effect until December 31, 2002, unless sooner terminated or extended as provided herein.

### 13.2 Extension

If the Legislature extends the OREHP beyond December 31, 2002, this Agreement is automatically extended for the period of time determined by DFG to be necessary to fully expend the Fund for the purposes set forth herein, provided, however, that no extension shall be effective beyond the date that the Legislature has extended the OREHP.

### 13.3 Early Termination

**13.3.a Mutual Agreement.** This Agreement may be terminated at any time by written mutual agreement of all the Parties.

**13.3.b Failure of Legislative Authority.** In the event that the Legislature fails to extend Article 8 of Chapter 5 of Division 6 of the Fish and Game Code, which provides for the OREHP, DFG, upon notice to the other Parties, may withdraw from this Agreement as of the effective date of such repeal. The Agreement then shall terminate as to all other Parties, 30 days after DFG's withdrawal.

**13.3.c Other Events Justifying Early Termination.** Any Party may effect the termination of this Agreement upon 30 days notice, if the operation of the hatchery ceases for any of the following reasons:

- (a) The operator loses the right to occupy the land upon which the hatchery is built;
- (b) The operator ceases to exist as a non-profit entity, and another entity does not qualify to assume management and operation of the hatchery;
- (c) The operation of the hatchery becomes impossible or impractical due to the occurrence of some event of *force majeure*.

**13.3.d Disposition of Assets.** Upon termination of the MOA, the disposition of the hatchery building and raceways will be the responsibility of the operations contractor. Equipment purchased by the operations contractor pursuant to this Agreement shall be retained by that contractor. Disposition of the hatchery fish will be the responsibility of DFG or its agent. Unexpended monies from the Fund shall be transferred to DFG or other entity designated by the Executive Director of the Coastal Commission and approved by the Coastal Commission for the sole purpose of funding activities that mitigate losses to the San Onofre kelp bed community.

#### 14.0 DESIGNATION OF PARTY REPRESENTATIVES

For purposes of this Agreement, each of the representatives listed below may exercise all the rights and discharge all the obligations of the represented Party, to the extent otherwise permitted by law.

Coastal Commission: Executive Director  
DFG: Deputy Director for Fisheries  
OREAP: Panel Chairman

The designated representatives listed above may delegate any of the responsibilities or authority specified in this Agreement to other members of their respective staffs. However, no Party shall assign any of its responsibility or authority to any other person or entity, without the consent of all other Parties.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement to this effect as of the date last signed below.

CALIFORNIA COASTAL COMMISSION

By: *Peter Douglas*  
Peter M. Douglas  
Executive Director

10/2/97  
Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: *Jacqueline E. Schafer*  
Jacqueline E. Schafer  
Director

10/20/97

OCEAN RESOURCES ENHANCEMENT ADVISORY PANEL

By: *Robert C. Fletcher*  
Robert C. Fletcher  
Panel Chairman

10/8/97  
Date

#### Appendices

- A. Hatchery Plan and Budget
- B. Hatchery Operating Expenses

#### Exhibits

- 1. Coastal Commission Permit Condition C, Section 3.0, Permit No. 6-81-330-A, adopted April 9, 1997
- 2. April 6, 1994 MOA