

CALIFORNIA COASTAL COMMISSION

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Date Filed:	May 2, 2005
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Staff Report:	May 20, 2005
Hearing Date:	June 9, 2005

ADMINISTRATIVE PERMIT AMENDMENT

CDP Application No.: E-01-018-A4

Applicant: California CoastKeeper Alliance

Project Location: In State waters offshore Laguna Beach, Palos Verdes, and Malibu

Project Description: Using rubber bands or rope, 1) outplant lab-grown juvenile kelp plants grown on tile or rope, and 2) transplant kelp removed from the natural marine environment to rocky reef substrate.

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: Section 13165 of the California Code of Regulations (Title 14) (14 CCR §13165) provides that the Executive Director may approve amendments to administrative permits upon the same criteria and subject to the same procedures as those applicable to administrative permits. Administrative permits are issued pursuant to Coastal Act section 30624 and sections 13145 through 13153 of the Commission's regulations, which provide that the Executive Director may issue an administrative permit if, among other things, the cost of the proposed development is not in excess of \$100,000. Pursuant to section 30624(b) of the Coastal Act and

section 13153 of the Commission's regulations, an administrative permit, or amendment thereto, issued by the Executive Director does not take effect until it is reported to the Commission and four Commissioners do not object to the administrative permit. Section 13150(a) of the Commission's regulations provides that the Executive Director shall act on an application for an administrative permit, or an amendment thereto, "on the same grounds that the Commission may approve an ordinary application" for a coastal development permit.

Public Resources Code §30624 provides that this permit amendment 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 amendment issuance shall not be effective, and the application shall be set for public hearing at a subsequent Commission meeting. This permit amendment will be reported to the Commission at the following time and location:

DATE: **June 9, 2005**
TIME: 9:00 am
PLACE: San Pedro, CA

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 amendment'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 Amendment Effectiveness.

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

PETER M. DOUGLAS
Executive Director

By: Alison Dettmer
ALISON J. DETTMER
Manager
Energy and Ocean Resources Unit

ACKNOWLEDGEMENT OF PERMIT AMENDMENT RECEIPT AND ACCEPTANCE OF CONTENTS:

The undersigned permittee acknowledges receipt of this permit amendment and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges 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 amendment.

Applicant's Signature _____ Date _____

SUMMARY

On March 22, 2002, the Executive Director issued Administrative Permit E-01-018 ("the permit"), for kelp restoration at two areas offshore of Malibu, Los Angeles County, and Crystal Cove, Orange County. Approved kelp restoration activities include using rubber bands or rope to outplant lab-grown juvenile kelp plants grown on tile or rope, and to transplant kelp removed from the natural marine environment to rocky reef substrate. The Coastal Commission approved three subsequent amendments to the permit in 2003 and 2004, authorizing kelp restoration work at additional sites in Santa Barbara, Ventura, Orange and Los Angeles Counties.

This amendment application proposes additional kelp restoration activities in new locations offshore of Laguna Beach, Palos Verdes, and Malibu. The application also proposes an extension of the original permit expiration date, from April 9, 2007 to October 1, 2008. Finally, the applicant proposes annual monitoring in the fall, rather than biannual monitoring each fall and spring as approved in the original permit. The activities proposed in the amendment application will cover all work anticipated through the expiration of the permit. The method of kelp restoration and monitoring activities will remain unchanged from the original permit.

1 STANDARD CONDITIONS

This permit amendment is subject to the following 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.

2 SPECIAL CONDITIONS

This permit amendment is granted subject to the following special conditions. Deletion of original permit condition language is indicated in ~~strikeout~~; new language is show as underline text.

1. **Project Term.** The permit shall expire October 1, 2008, ~~five years from the date of permit issuance, unless before that date the applicant obtains approval of an amendment to the permit to extend its term.~~ The permit amendment application shall include a five-year summary report assessing the success of the kelp restoration project as compared to control sites and baseline biological data.
2. **California Department of Fish and Game Letter of Permission.** By January 30 of each year, the applicant shall submit to the Executive Director copies of each new Letter of Permission issued by the California Department of Fish and Game ("CDFG") for the proposed project for each restoration area.
3. **Monitoring and Reporting Requirements.** By January 1 of each year, the applicant shall submit to the Executive Director annual monitoring reports with the following information: (a) documentation of the number of juvenile kelp plants outplanted and the number of kelp plants transplanted; (b) identification and description of unmanipulated control sites and baseline existing biological characteristics prior to project commencement; (c) documentation and assessment of the success of outplanting and recruitment activities as compared to baseline conditions and unmanipulated control sites.

No later than January 1, 2009, the applicant shall submit to the Executive Director a final monitoring report, summarizing the contents of the annual monitoring reports and assessing the success of the kelp restoration project as compared to control sites and baseline biological data.

4. **Exclusionary Devices.** The applicant shall not use or install mesh nets or any other exclusionary devices at the project sites.
5. **Alteration of Natural Community.** The applicant shall not alter the natural communities of the marine environment in any way other than that authorized by the CDFG in its annual Letters of Permission and by this permit.

3 EXECUTIVE DIRECTOR'S DETERMINATION

The Executive Director hereby determines that the proposed development, as modified by the proposed administrative permit amendment, is a category of development, which, pursuant to PRC § 30624 and section 13165 of the Commission's administrative regulations, qualifies for approval by the Executive Director through the issuance of an administrative permit amendment. Pursuant to section 13150(a) of the Commission's administrative regulations, the Executive Director further determines that, subject to Standard and Special Conditions, as amended, the proposed 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.

4 FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

4.1 Project Background

On March 22, 2002, the Executive Director issued Administrative Permit E-01-018 ("the permit"), for kelp restoration at two 2,000-square meter restoration areas offshore of Malibu, Los Angeles County, and Crystal Cove, Orange County. Approved kelp restoration activities include using rubber bands or rope to outplant lab-grown juvenile kelp plants grown on tile, and to transplant kelp removed from the natural marine environment to rocky reef substrate. The Coastal Commission approved three subsequent amendments to the permit in 2003 and 2004, authorizing kelp restoration work at additional sites in Santa Barbara, Ventura, Orange and Los Angeles Counties.

Historic kelp canopy coverage charts and biomass estimates indicate significant declines in kelp coverage over the last forty years along the Southern California bight. The applicant's objective is to restore kelp by performing juvenile kelp outplanting and kelp transplanting, with the majority of the restoration effort depending upon lab-grown kelp outplanting. In all cases, the applicant proposes to restore *Macrocystis pyrifera*, giant kelp.

The applicants for the original permit were Santa Monica Bay Keeper and Orange County Coastkeeper. The first amendment to the permit, E-01-018-A1, added Santa Barbara Channelkeeper and Ventura Coastkeeper as permittees. The applicant for this amendment, California Coastkeeper Alliance, is an umbrella organization whose members are the previous permittees; namely, Santa Monica Bay Keeper, Orange County Coastkeeper, Santa Barbara Channelkeeper, and Ventura Coastkeeper. On April 27, 2005, the Commission received notification from Orange County Coastkeeper that that organization was discontinuing its kelp restoration program. By letter dated April 20, 2005, California Coastkeeper Alliance agreed to assume responsibilities and operational activities previously undertaken by Orange County Coastkeeper. Santa Monica BayKeeper and the California Coastkeeper Alliance will carry out the activities proposed in this amendment application.

Original Permit E-01-018

The original permit approved restoration activities in two areas: at Crystal Cove in Orange County (N 33 34.281, W 117 50.469), and in the Escondito Beach area offshore Malibu in Santa Monica County (N 34 01.151, W 118 48.265). Four 500-meter square restoration areas, centered on the coordinates listed above, were approved for each site.

Amendment E-01-018-A1

Amendment E-01-018-A1 was granted on June 13, 2003 to add Santa Barbara Channelkeeper and Ventura Coastkeeper as permittees under permit E-01-018, and to add a new kelp restoration site at Carpinteria Reef in Santa Barbara County (N 34 23.379, W 119 32.404). The Carpinteria restoration area consists of six 500-meter square restoration sites, and two 500-meter square control sites, for a total project area of 4,000 square meters.

Amendment E-01-018-A2

Amendment E-01-018-A2 was granted on September 15, 2003 to add three new kelp restoration areas, one at Escondido, one at Del Mar in San Diego, and a second site at Crystal Cove in Orange County.

Amendment E-01-018-A3

Amendment E-01-018-A3 was granted on April 30, 2004 to add one new kelp restoration area offshore Laguna Beach in Orange County. The Laguna Beach restoration area consists of three 1000-meter square sites, and one 1000-meter square control site.

Summary of Activities

Restoration activities performed by the applicant organizations are summarized in Table 1 below:

Table 1: Summary of Current Kelp Restoration Activities

		2002		2003		2004	
		Outplants	Transplants ¹	Outplants	Transplants	Outplants	Transplants
Santa Barbara	Carpinteria	0	0	750	0	0	0
Santa Monica	Escondito 1	822	14	0	0	0	0
	Escondito 2	0	0	0	0	0	0
Orange County	Crystal Cove 1	1296	4	677	1	0	0
	Crystal Cove 2	0	0	195	6	1245	0
	Laguna Beach	0	0	0	0	1099	0
San Diego	Del Mar	0	0	688	0	0	0
Total		2118	18	2310	7	2344	0

¹Transplant data includes only the number of sporophyll bags transplanted as part of restoration activities, and does not include information on adult drift kelp transplanted at the restoration sites.

Evaluation of Performance

The success of the kelp restoration projects can be measured in terms of plant density as well as abundance and diversity of wildlife. One of the goals of the project is to establish mature kelp beds, where “maturity” is defined by the applicant as an average of approximately one adult plant per ten square meters¹.

¹ One adult plant per ten square meters is conservative by Coastal Commission standards. For the SONGS mitigation reef, the Commission imposed a standard of four adults per one hundred square meters, equivalent to one adult per twenty-five square meters. See CDP No. 6-81-330- A, formerly 183-73 and the report *Proceedings from the Fourth Annual Public Workshop of the SONGS Mitigation Project Condition C: Kelp Forest Mitigation, March 18, 2004*. Ed. Dan Reed and Steve Schroeter, Marine Science Institute, University of California, Santa Barbara. Prepared for the California Coastal Commission. June 18, 2004.

The organizations involved in kelp restoration under the original permit have conducted some monitoring activities since the project began in 2001. Monitoring information, however, is patchy, due to a variety of reasons including poor diving conditions, difficulty locating fixed transects, and staff turnover. The organizations are continually refining survey techniques, and starting with the Fall 2004 surveys, complete data will be collected for all restoration and control sites, describing a) adult and juvenile plant densities, and b) abundance and diversity of animal species. A better assessment of the performance of the restored reefs should be possible at the end of the restoration program, in 2008.

The monitoring data available through spring 2004 is presented in Table 2 below. Restoration sites are areas devoid of kelp where restoration and monitoring techniques are applied. Control sites are areas where monitoring but no restoration occurs.

Table 2: Mean Density of Adult Kelp Plants

		Number of Adult Plants per Square Meter				
		Spring 2002	Fall 2002	Spring 2003	Fall 2003	Spring 2004
Santa Barbara	Restoration		0.0		0.0	
	Control		0.0		0.0	
Santa Monica	Restoration	0.69	1.21		0.26	
	Control	0.27	1.44		0.95	
Orange County	Restoration	0.19		0.06	0.17	
	Control	0.0	0.0	0.0	0.0	
San Diego	Restoration				0.06	0.23
	Control				0.31	

Note: Data is not available for all sites for all seasons. Lack of data is indicated by a blank entry in the table.

Source: Final Progress Report, Southern California Regional Kelp Restoration Project 2001-2004. December, 2004.

4.2 Project Description

This amendment application proposes three changes to the original permit and subsequent amendments. First, the applicant proposes additional restoration sites, as detailed in section 4.3 Project Location, below. Second, the applicant proposes to change the expiration date of the original permit from the original expiration date of April 9, 2007 to October 1, 2008. Finally, the applicant proposes annual monitoring in the fall, rather than biannual monitoring each fall and spring as approved in the original permit.

Restoration and monitoring techniques will not change from those proposed in the original permit. Juvenile kelp plants will be grown at a shared mariculture facility at the Southern California Marine Institute. Each juvenile kelp plant will be cultured individually on half-inch by four-inch non-glazed, non-leaded ceramic tiles, or on four-inch natural fiber rope segments in aquaria. Juvenile plants will be grown until they reach sufficient size (approximately 5 cm) to be planted at the new restoration areas. Divers will attach the kelp and the tiles to sub-tidal reef substrate with natural latex biodegradable rubber bands. When these plants have grown enough to attach themselves to the reef substrate (8-12 months), divers will remove all rubber bands and tiles.

In addition to out-planting lab-grown juvenile kelp, the applicants propose to transplant drift kelp with reproductive material to act as a spore source. The applicant also proposes to place bags of reproductively active kelp material, called "sporophylls", to seed the restoration areas. Sporophyll bags will be monitored regularly and will be removed prior to completion of the project. The applicant will monitor the new restoration and control sites to assess the growth and mortality of outplanted and transplanted kelp.

This amendment revises **Special Condition 1** so that the permit expires on October 1, 2008. This amendment also revises **Special Condition 3**, to require a final report at the end of restoration activities, to be submitted to the Executive Director no later than January 1, 2009.

4.3 Project Location

The applicant proposes to expand kelp restoration activities into the following areas:

N 33.7343	W 118.3965	(Long Point/MarineLand)
N 33.7399	W 118.4083	(Point Vicente)
N 34.0215	W 118.7672	(Escondito Beach)
N 33.51312	W 117.7621	(Treasure Island)
N 33.52418	W 117.77095	(Moss)
N 33.52565	W 117.77345	(Wood's Cove)
N 33.54385	W 117.80545	(Dead Man's Reef)
N 33.5432	W 117.8033	(Shaw's Cove)
N 33.5434	W 117.79693	(Condo Point)

Each area is 20,000 square meters centered on the coordinates listed above, for a total expansion area of 180,000 square meters. Within each restoration area, three restoration sites and one control site will be established. The location and dimensions of the restoration and control sites within each restoration area will be determined by the physical properties of the reef. Each proposed restoration and control site will measure approximately 60 feet by 100 feet.

4.4 Agency Approvals

In a letter dated April 19, 2005, the California Department of Fish and Game granted the California Coastkeeper Alliance permission to gather drift kelp for transplanting purposes and to gather sporophytes for lab culture, with some restrictions. These restrictions include a prohibition on excluding herbivorous fish using mesh nets around kelp plants, and a requirement that the natural marine community not be altered in any way beyond that specifically authorized in the permission letter. A similar letter was issued to Santa Monica Baykeeper on May 13, 2005.

In addition to permission from the California Department of Fish and Game, the applicant obtained letters of support (or of no objection) from the U.S. Fish and Wildlife Service, the Regional Water Quality Control Board, the U.S. Coast Guard, and the City of Laguna Beach. The U.S. Army Corps of Engineers intends to authorize the proposed project under Nationwide Permit 27 following Coastal Commission approval.

The State Lands Commission has indicated that the sites at Moss Street, Wood's Cove, Dead Man's Reef, Shaw's Cove, and Condo Point involve sovereign lands that have been legislatively granted to the City of Laguna Beach, pursuant to Chapter 50, Statutes of 1929. The remainder of the sites, specifically those in Los Angeles County and the Treasure Island site in Orange County, require a lease from the State Lands Commission.

The City of Laguna Beach issued a letter dated January 10, 2005, granting the applicant permission to conduct the project at these locations. The State Lands Commission approved a lease for the sites in Los Angeles County and the Treasure Island site in Orange County on April 26, 2005.

4.5 Coastal Act Issues

4.5.1 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 in part:

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 and, where feasible, restored...

Existing Conditions at New Restoration Sites

The applicant chose the restoration areas based on the following criteria:

- Historically supported kelp forest communities
- Water depth between thirty and forty-five feet
- Continuous rocky reef substrate with three to ten feet of relief
- Minimal sand patches within the restoration area
- Appropriate for restoration techniques

Based on these criteria, each of the proposed new restoration areas have continuous rocky substrate (approximately 80%) with minimal sand coverage and three to ten feet of relief.

Biotic communities at the new restoration areas include typical algal, benthic invertebrate and pelagic species common to kelp reefs in the Southern California area. Typical species include kelp bass, sand bass, Garibaldi, sheep head, black serf perch, scallops, snails, sea stars, hermit crabs, sea urchins, feather boa kelp and common understory algae. None of the restoration sites provide habitat for special-status species.

Potential Impacts of Proposed Restoration Activities

The purpose of the proposed project is to restore the Southern California bight's kelp population, which serves Section 30230 and 30231's goal of restoring marine resources. Restoration and monitoring techniques will not change from those approved in the original permit. The proposed kelp restoration activities could potentially impact marine resources by: (1) disrupting existing kelp beds from which kelp is harvested; (2) disrupting sea urchins located at restoration areas; and (3) disturbing hard bottom habitat due to placement of kelp attachment materials.

The proposed project includes harvesting kelp plants from existing kelp beds and transplanting reproductive material ("sporophyll bags") and lab-grown juvenile kelp plants in the proposed restoration areas. The applicant also proposes to relocate sea urchins from the new restoration areas. The potential disruption of existing kelp beds from which kelp is harvested and potential impacts to sea urchins due to sea urchin relocation fall within the jurisdiction of the California Department of Fish and Game ("CDFG"). The Fish and Game Code (§6653 and §6750) provides the Fish and Game Commission with the authority to establish regulations as may be necessary to ensure the proper harvesting of kelp and aquatic plants for commercial and sport purposes.² The CDFG is the agency with primary responsibility for managing giant kelp (*Macrocystis pyrifera*) pursuant to commercial and sport fishing regulations (14 CCR §30 and § 165).

CDFG issued a Letter of Permission on April 19, 2005 to California Coastkeeper Alliance authorizing that organization to transplant kelp in the Laguna Beach area, and to harvest kelp from the Newport and Dana Point Harbors. On May 13, 2005, CDFG issued a Letter of Permission to Santa Monica Baykeeper authorizing Baykeeper to gather drift kelp for transplanting purposes, to harvest sporophylls for lab culture, and to transplant kelp at Santa Monica Bay. The Letters of Permission include the following restrictions:

- 1) The applicant is required to obtain Scientific Collecting Permits for collecting sporophylls for lab culture.
- 2) A maximum of 12 adult plants and 200 juvenile plants may be transplanted within any one calendar month.
- 3) A maximum of 5% of any kelp bed may be removed within one calendar year.
- 4) No rock, 6 inches or larger, in any dimension, may be moved from any existing reef site.
- 5) The applicant is prohibited from excluding herbivorous fish through the use of mesh nets, or altering the natural community in any way beyond translocation of kelp, transplanting of lab grown sporophytes, and urchin removal.

² Under §6650, the F&GC may establish license and permit requirements; establish fees and royalties; require report of take; establish open and closed seasons; establish or change possession limits; establish and change area or territorial limits for harvesting; and prescribe the manner and the means of taking kelp and aquatic plants for commercial purposes. Under §6750, the F&GC may establish, extend, shorten or abolish open seasons and closed seasons; establish, change, or abolish bag limits, possession limits, and size limits; establish and change areas or territorial limits for taking; and prescribe the manner and means of taking kelp and aquatic plants for recreational purposes.

The Letters of Permission authorize California Coastkeeper Alliance to move purple sea urchins out of the immediate kelp transplant areas, and authorize Santa Monica Baykeeper to move all species of sea urchins out of the immediate kelp transplant areas. The Letters of Permission expire one year after they were issued.

The Fish and Game Commission's regulation through its Letters of Permission of kelp and sea urchin harvesting and/or removal constitutes a "wildlife...management program" within the meaning of that term as it is used in Section 30411(a) of the Coastal Act. That provision prohibits the Coastal Commission from "establish[ing] or impos[ing] any controls with respect to [any such program] that duplicate or exceed regulatory controls established by" the Fish and Game Commission. **Special Condition 2** requires the applicant to submit to the Executive Director copies of each new Letter of Permission issued by CDFG for the proposed project for each restoration area, by January 30 of each year. The Commission will thereby be kept informed of the status of CDFG's regulation of the proposed project.

To maintain optimum populations of marine organisms, **Special Conditions 4 and 5** of the original permit will remain in effect for this project amendment. **Special Condition 4** prohibits the applicant from using mesh nets or any other exclusionary devices that could interfere with the natural movements of fish and other aquatic organisms. **Special Condition 5** prohibits the applicant from altering the natural communities of the marine environment in any way other than that authorized by CDFG in its Letters of Permission and by this permit.

The third potential impact of restoration activities at the new areas is disruption of existing low and medium relief hard bottom habitat at the restoration areas due to temporary placement of kelp attachment materials. The applicant proposes to remove all attachment materials as soon as plants are mature enough to be independently attached to the substrate. The applicant organizations have successfully removed tiles and other attachment materials from earlier out-plantings of kelp plants. Removal of the attachment materials will not harm the kelp or hard bottom. The applicant will assess the need for attachment material removal during visual surveys that will take place every three months.

Permit Expiration

Evidence of the success of kelp restoration efforts of the type proposed by the applicants is inconclusive, and previous kelp restoration projects have had mixed results.³ **Special Conditions 1 and 3** of the original permit acknowledge the experimental nature of the proposed project by imposing monitoring and reporting requirements, and restricting the term of the permit to five years. If the applicant wants to extend the life of the permit and continue restoration activities beyond the five-year limit, the original language of **Special Condition 1** requires the applicant to submit a report discussing the success of restoration activities. The Commission at the time of the application would have the opportunity to review the results of the project, and determine if the project is successful and if continuation of project activities is warranted.

The original text of **Special Condition 1** reads:

³ See the California Department of Fish and Game's report *California's Living Marine Resources: A Status Report* pp. 280-281. December 2001.

Project Term. This permit shall expire five years from the date of permit issuance, unless before that date the applicant obtains approval of an amendment to this permit to extend its term. The permit amendment application shall include a five-year summary report assessing the success of the kelp restoration project as compared to control sites and baseline biological data.

The applicant has included with this amendment application a monitoring report discussing project activities and results from 2002 through 2004.⁴ As discussed in section 4.1 "Evaluation of Performance" of this staff report, the applicant had early difficulties collecting monitoring data, and the data collected is inconclusive regarding the success of the restoration efforts. The applicant organizations have developed more successful monitoring techniques over the past several years. Extending the project through 2008 will provide the applicant with one additional season of data collecting, and one additional year to assess the performance of the kelp reefs. This permit amendment therefore revises **Special Condition 1** to extend the life of the permit until October 1, 2008. This amendment also revises **Special Condition 3** to require the applicant to submit a final monitoring report no later than January 1, 2009. The final report must summarize the contents of the annual monitoring reports and assess the success of the kelp restoration project as compared to control sites and baseline biological data.

Monitoring and Reporting Requirements

As per the project description in the original permit, the applicant is authorized to conduct biannual data collection (i.e., transect surveys) each fall and spring. Since 2002, however, the applicant organizations have determined that spring diving conditions are frequently so poor as to preclude accurate surveys. The applicant therefore proposes in this amendment to conduct annual surveys in the fall only. The project description in the original application states that monitoring will occur biannually, however, annual surveys are consistent with **Special Condition 3** of the original permit, which states:

Monitoring and Reporting Requirements. By January 1 of each year, the applicant shall submit to the Executive Director annual monitoring reports with the following information: (a) documentation of the number of juvenile kelp plants outplanted and the number of kelp plants transplanted; (b) identification and description of unmanipulated control sites and baseline existing biological characteristics prior to project commencement; (c) documentation and assessment of the success of outplanting and recruitment activities as compared to baseline conditions and unmanipulated control sites.

Annual surveys, as opposed to biannual surveys, will not preclude the applicant from complying with **Special Condition 3**, and will not undermine the ability of the applicant to assess the success of restoration activities.

⁴ *Final Progress Report, Southern California Regional Kelp Restoration Project 2001-2004.* December 2004.

Conclusion

For the reasons described above, the Executive Director finds that the proposed project, as conditioned, will be carried out in a manner protective of marine resources consistent with Coastal Act sections 30230 and 30231.

4.5.2 Public Access and Recreation

Coastal Act § 30220 states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act § 30234.5 states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

The proposed project offers volunteer divers recreational opportunities to perform kelp restoration work and monitoring. The applicants will use small recreational boats to support the volunteer divers, and the boats will be located only temporarily in the restoration areas when kelp outplanting, transplanting, monitoring or surveying activities are taking place. If restoration is successful, recreational opportunities for scuba diving, fishing, and kayaking may be enhanced.

The proposed kelp restoration project will not interfere with the public's right of access to the sea or along the shoreline because it does not involve any construction on land or preclude water-oriented recreational activities at the restoration areas. To further ensure that the project will not interfere with the public's use of the sea, **Special Condition 4** prohibits the placement of any mesh nets or other exclusionary devices.

Therefore, the Executive Director concludes that, as conditioned, the project will not interfere with the public's access to and recreational use of the coast consistent with Coastal Act sections 30220 and 30234.5.

4.5.3 Placement of Fill in Coastal Waters

Coastal Act section 30108.2 defines "fill" as "earth or any other substance or material, including pilings placed for purposes of erecting structures thereon, placed in a submerged area." The ceramic tiles, rubber bands, and ropes that will be used to attach the kelp plants to reef substrate constitute fill as that term is defined in Coastal Act section 30108.2.

Coastal Act § 30233(a) states in part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative, and where

feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities.*

Coastal Act section 30233(a) permits fill in coastal waters if three tests are met. The first test requires that the project fit into one of the eight categories of uses permitted for open coastal water fill enumerated in Coastal Act section 30233(a). The Executive Director finds that the proposed kelp restoration activities are clearly allowed under use number (7), "restoration purposes."

The second test requires that there be no feasible less environmentally damaging alternative. The proposed kelp restoration project is designed to have no negative impact on the marine environment, and in fact is intended to restore diminished kelp populations. The proposed attachment materials are the minimum required to achieve the project goal of kelp outplanting and transplanting, and the applicants will remove all artificial materials from the restoration areas. Therefore, the Executive Director finds that the proposed restoration project has no feasible less environmentally damaging alternative.

The final test of Coastal Act section 30233(a) requires that feasible mitigation measures be provided to minimize any adverse environmental effects. In other sections of this report, the Executive Director has identified feasible mitigation measures that will minimize the project's

potential environmental impacts. With the imposition of the conditions of this permit, the Executive Director finds that the third and final test of Coastal Act section 30233(a) has been met.

Because the three tests have been met, the Executive Director finds the proposed project consistent with section 30233(a) of the Coastal Act.

5 CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

APPENDIX A
Substantive File Documents

DOCUMENTS

Final Progress Report. Southern California Kelp Restoration Project 2001-2004. A Regional Partnership between the NOAA Community-based Restoration Program and the California Coastkeeper Alliance. Prepared by Jessie Altstatt, Santa Barbara Channelkeeper, et. all. December 2004.

Coastal Development Permit E-01-018. Approved April 9, 2002

Coastal Development Permit E-01-018-A1. Approved June 2, 2003

Coastal Development Permit E-01-018-A2. Approved August 28, 2003

Coastal Development Permit E-01-018-A3. Approved April 30, 2004

LETTER CORRESPONDENCE

May 13, 2005. From Gary Stacy to Tom Ford. DFG Letter of Permission for Santa Monica BayKeeper

April 20, 2005. From Linda Sheehan and Tom Wolf to Audrey McCombs. Subject: California Coastkeeper Alliance assumes Orange County Coastkeeper responsibilities

April 19, 2005. From Patricia Wolf to Nancy Caruso. Subject: DFG Letter of Permission for California Coastkeeper Alliance

April 14, 2005. From Linda Sheehan and Tom Ford to Audrey McCombs. Subject: Personnel changes

March 14, 2005. From Mark Durham to Tom Ford. Subject: Army Corps of Engineers preliminary approval for proposed project.

March 2, 2005. From Nancy Caruso to Audrey McCombs. Subject: Application submission materials. Including attachments.

February 7, 2005. From Audrey McCombs to Gary Brown. Subject: Filing status for application for an amendment to CDP E-01-018

January 10, 2005. From John Montgomery to Nancy Caruso. Subject: City of Laguna Beach landowner approval for sites within the City's jurisdiction

January 3, 2005. From Jane Smith to Tom Ford and Nancy Caruso. Subject: State Lands Commission jurisdiction over kelp restoration sites

December 14, 2004. From Tom Ford to Audrey McCombs. Subject: Application submission materials. Including attachments.

December 4, 2004. From Nancy Caruso to Audrey McCombs. Subject: Application submission materials. Including attachments.

E-MAIL CORRESPONDENCE

April 27, 2005. From Gary Brown to Essie Greene, Eric Kingsley, *et. all.* Subject: Thank you from Orange County Coastkeeper