

## CALIFORNIA COASTAL COMMISSION

South Coast Area Office  
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# Th6a



Staff: DZ – LB  
Date: November 27, 2019

## ADMINISTRATIVE PERMIT

**Application No.**        **5-18-0988**

**Applicant:**            **Ocean Institute & California Department of Fish and Wildlife**

**Project Description:**    After-the-fact request for approval of installation of approximately 16-foot long, 7.5-foot wide, 5.5-foot deep partially submerged white seabass grow-out pen with an approximately 3.75-foot wide floating walkway around the perimeter, and operation and maintenance as part of the Ocean Resources Enhancement and Hatchery Program.

**Project Location:**      Pacific Ocean adjacent to 24200 Dana Point Harbor Drive, Dana Point, Orange County

## EXECUTIVE DIRECTOR'S DETERMINATION

The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

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

**Thursday, December 12, 2019 9:00 am**  
**King Gillette Ranch**  
**26800 Mulholland Highway**  
**Calabasas, CA 91302**

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

Pursuant to 14 Cal. Admin. Code Sections 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 CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.**

JOHN AINSWORTH  
Executive Director

By: Dani Ziff  
Title: Coastal Program Analyst

**STANDARD CONDITIONS**

This permit is granted 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 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 or interpretation of any term or 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: SEE PAGE SIX.**

**EXECUTIVE DIRECTOR'S DETERMINATION (continued):**

The Executive Director hereby determines that the proposed development is a category of development, which, pursuant to PRC Section 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. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

**FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION**

**A. PROJECT DESCRIPTION**

The application is an after-the-fact request for approval of installation, and operation and maintenance of a white seabass grow-out pen (**Exhibit 2**) within Dana Point Harbor as part of the California Department of Fish and Wildlife's (CDFW) Ocean Resources Enhancement and Hatchery Program (OREHP). The proposed development includes construction of an approximately 16-foot long, 7.5-foot wide, 5.5-foot deep grow-out pen with an approximately 3.75-foot wide floating walkway around the perimeter. The walkway is constructed of wood and fiberglass and is buoyed by pontoons. No piles are proposed. There is an approximately 42-inch high semi-visually permeable guardrail on the south and west sides of the walkway around the pen. Approximately two-thirds of the 5.5-foot deep pen is underwater. The in-water volume is approximately 13 cubic meters and the total volume is 18.65 cubic meters. The pen is enclosed in a net to provide protection from avian and other predators, as well as shade from the sun.

The OREHP was created through California Department of Fish and Game Code 6590 in 2005 for the purpose of conducting research on the artificial propagation and rearing of recreationally and commercially significant marine finfish species. The Program focuses on aquaculture of white seabass, which have been reared and released through OREHP pursuant to the Procedures Manual for the Growout and Release of White Seabass (*Atractoscion nobilis*) at different harbor and marina locations in southern California. The development and maintenance of these pens were permitted through CDP No. 5-16-0558-W, which replaced and consolidated nine applications for individual grow-out facilities. The facility subject to this after-the-fact permit application was constructed in 2012, and was not approved pursuant to the referenced programmatic CDP.

The juvenile fish for the proposed grow-out pen will be provided by the marine hatchery at the Carlsbad location, which is operated by Hubbs-SeaWorld Research Institute under CDFW contract. Tagged juveniles will be reared at the proposed facility for no longer than six months and released in accordance with the Growout Procedures Manual, referenced above, for an indefinite period of time. The operation of the grow-out facility would be carried out with oversight from CDFW staff – including environmental scientists and fish pathologists – and would be consistent with best management practices and impact avoidance measures established through the Growout Procedures Manual. In addition, the facility would be regularly inspected and maintained to ensure that predator exclusion netting (both for underwater and avian predators) remains intact and in functional condition. Furthermore, OREHP has a Benthic Monitoring Plan that would be implemented before the pen is stocked pursuant to the project information submitted with the subject CDP application.

As proposed, the white seabass pen will be an integral part of the Ocean Institute's education and community involvement programs. The proposal includes education programs focused on food science, aquaculture, water quality, data collections, fish anatomy, and tag technology. The Ocean Institute also plans to engage volunteers in hands-on monitoring activities, fish delivery, and leadership of educational tours.

The subject site is located at the terminus of a dock in the waters of Dana Point Harbor adjacent to a public waterfront walkway and the Ocean Institute (**Exhibit 1**). The Ocean Institute is an education center run and non-profit organization that focuses on marine science and maritime history education with access to teaching labs, a learning center, tall ships, and an oceanographic research vessel.

Fine benthic sediment with scattered small rocks exists beneath the pen and in the project vicinity. According to surveys conducted in October and November 2019, there is no eelgrass present in the project vicinity; however, motile species including bay blenny, striped shore crab, giant kelpfish, crevice kelpfish, opaleye, and calico bass have been observed in the area.

## **B. WATER QUALITY & MARINE RESOURCES**

Rearing high densities of fish in coastal waters has the potential to adversely impact water quality through nutrient loading. As proposed, stocking densities at the grow-out facility would remain significantly below the National Pollutant Discharge Elimination System Permit threshold level established by the U.S. Environmental Protection Agency for both temperate and warmer waters. In addition, the results of over ten years of water quality monitoring carried out for the Regional Water Quality Control Boards at all grow-out facilities in Los Angeles and San Diego Counties indicates that operation of such facilities would not result in adverse impacts to water quality. In any case, before the pen is stocked, the applicant will carry out monitoring of the facility and environmental impacts consistent with the OREHP Benthic Monitoring Plan.

Some aquaculture operations also have the potential to adversely impact the marine environment through the introduction of diseases and invasive species. White seabass are a species of finfish native to southern California that, due to its popularity as a commercial sporting fish, had been severely overfished. The results from over ten years of this program indicate that use of such facilities have not impacted significantly altered sediment chemistry or biology at each location. As proposed, stocking of the grow-out pen would be limited to white seabass and grow-out practices would be consistent with CDFW's Growout Procedures Manual. In addition, prior to release, the fish will be screened by a CDFW fish pathologist. **Special Condition 1** requires all development to be carried out consistent with the approved project including the Growout Procedures Manual. Any changes to the approved project require a permit amendment. Furthermore, **Special Condition 2** requires any proposed changes, including the grow-out of a different species, to be reviewed and approved by the Commission's Executive Director. Therefore, the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act because it will preserve and enhance water quality and will not adversely impact marine resources.

## **C. PUBLIC ACCESS & RECREATION**

The dock float surrounding the fish pen will not be publically accessible as it is being used for scientific research and educational tours. However, immediately adjacent to the dock there is a

public walkway that connects to a public beach, park, breakwater, the Dana Point Harbor, and the Ocean Institute, which welcomes and educates members of the public. The proposed project enhances public access and recreation in two ways. First, as proposed, the pen will be used as a teaching instrument for the public and hired volunteers. Second, the release of white seabass supplements existing native stocks, which are popular recreational sporting fish. **Special Condition 1** requires all development to be carried out consistent with the approved project. Any changes to the approved project require a permit amendment. Thus, as proposed and conditioned, the proposed development will not adversely affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as conditioned, the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### **D. UNPERMITTED DEVELOPMENT**

Violations of the Coastal Act that are associated with the subject event have been undertaken by the applicant on the project site, including installation of a grow-out pen that was constructed concurrently with the approved dock (CDP 5-06-068) in 2012 at an off-site location and floated into the project site. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. The applicant submitted a CDP application to the Coastal Commission offices on October 4, 2018. Commission review and action on this permit for after-the-fact installation of the fish pen and dock float, as described in Section A above, will resolve the violation identified in this section.

Although unpermitted development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

#### **E. LOCAL COASTAL PROGRAM (LCP)**

A coastal development permit is required from the Commission for the proposed development because it is located within the waters of Dana Point Harbor within the Commission's area of original jurisdiction. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The City of Dana Point certified LCP, certified by the Commission in 1989, is advisory in nature and may provide guidance. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act.

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. A Final Negative Declaration for OREHP was prepared in January 2012 and adopted by CDFW in July 2012. Therefore, the Executive Director finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **SPECIAL CONDITIONS**

This permit is granted subject to the following special conditions:

- 1. Permit Compliance.** The permittee shall undertake and maintain the development in conformance with the special conditions of the permit and the final plans, including but not limited to the Procedures Manual for the Growout and Release of White Seabass (*Atractoscion nobilis*). Any proposed changes to the approved plans shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plans shall occur without a Commission-approved permit amendment unless the Executive Director determines that no permit amendment is required.
- 2. Future Development.** This permit is only for the development described in coastal development permit (CDP) 5-18-0988. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by the CDP 5-18-0988. Accordingly, any future improvements to the development authorized by this permit, including, but not limited to, the introduction of a species other than *Atractoscion nobilis*, shall require an amendment to CDP 5-18-0988 from the Commission or shall require an additional CDP from the Commission unless the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

## **ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS**

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

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

\_\_\_\_\_  
Date of Signing