

CALIFORNIA COASTAL COMMISSION

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August 9, 2022

TO: Coastal Commissioners and Interested Parties

FROM: John Ainsworth, Executive Director
Cassidy Teufel, EORFC Manager
Amanda Cousart, Environmental Scientist

SUBJECT: Addendum to Staff Report for CDP 9-19-1242, Tomales Bay Oyster Company

This addendum provides additions and revisions to the July 21, 2022 staff report.

I. CHANGES TO STAFF REPORT

The following are revisions to the text of the staff report and recommendation. Proposed deletions are marked with ~~strike through~~ text and additions are marked with underlined text.

- a) Revised text in the table at the top of page 1:

Hearing Date: 8/140/2022

- b) Additional text at the end of the first paragraph on page 2 and second full paragraph on page 12:

...1-93-73-A2 issued to the Charles Friend Oyster Company, Inc.

...Tomales Bay (under the name of Charles Friend Oyster Company, Inc. (CDP 1-93-73-A1)) at a location several miles...

- c) Additional and revised text in the last paragraph of page 6:

3. Removal and Disposal of Abandoned Structures. Within 12 ~~24~~ months of permit issuance, TBOC shall collect and remove its floating barge and all abandoned shellfish cultivation structures and gear (including wooden and PVC posts and remnants of cultivation racks) from within and in the immediate vicinity of State Water Bottom Lease No. M-430-05 in accordance with Exhibit 4. This deadline may be extended by the Executive Director for no more than

12 additional months based on good cause and evidence of progress. All collected materials shall be properly disposed of at a certified onshore landfill or waste receiving facility...

- d) Revised and additional text in the last paragraph of page 8 and second paragraph of page 9:

B. Gear Marking. WITHIN 24 MONTHS OF PERMIT ISSUANCE, ~~the~~ Permittee shall mark shellfish culture bags, baskets, and floats in an easily...

C. Marine Debris Reduction Training. WITHIN 45 DAYS OF PERMIT ISSUANCE (and annually thereafter), ~~the~~ Permittee shall conduct ~~annual-~~ employee training regarding marine debris issues, including...

- e) Revised and additional text on the last paragraph of page 12 and second paragraph of page 33:

The intake system has an average ~~daily annual~~ intake of approximately ~~190-gallons (70,000 gal/year)~~ 1.5 million gallons.

The intake system has an average ~~daily annual~~ intake of approximately ~~190-gallons (70,000 gal/year)~~ 1.5 million gallons.

- f) Additional text at the top of page 12:

...proposed. Given the complex history of TBOC's operations and permitting, this report and staff recommendation represent a case-specific approach based on unique circumstances and history that should not be considered viable for other projects.

- g) Additional text in the third full paragraph on page 12:

TBOC's operations, in addition to the cultivation area, also include a 360 square foot work barge located in the cove area of its lease, west of the pier and work facilities. The barge is used as a staging area for planting, sorting, harvesting and transferring shellfish. In addition, bags of bay mussels are cultivated from the sides of the barge in mesh bags that hang into the water. The top of the barge supports two wooden sorting tables but it has no mechanical equipment, power or fuel. Two trash containers used to collect culled shellfish and other debris from sorting or transfer activities are tied to the sorting tables with poly rope. Equipment for farm infrastructure like anchors, pipe or rope may be stored on the barge temporarily and is securely tied down under the tables. As part of TBOC's proposed efforts to remove abandoned aquaculture gear and equipment (memorialized through **Special Condition 3**) this barge is also proposed to be removed from the bay and disposed of at an appropriate onshore facility.

- h) Revised text in the second to last paragraph of page 13:

Figure-3 2

The tanks are cleaned and sanitized on a routine weekly basis in order to retain as much ~~cold~~ fresh saltwater as possible.

- i) Revised and additional text in the first, second and third paragraphs of page 14:

Each line can hold 75-165 oyster bags arrayed in a single row, as shown below in Figure 3.

...into the substrate and are raised to the surface using plastic buoys and worked by boat...

TBOC currently suspends polyethylene mesh bags side-by-side in a single row with a plastic float on one end of the bag from the longlines.

Worked by boat, ~~T~~the tipping bag system allows the oysters to float with the tide, without the routine manual flipping required of bottom bags.

...Bottom bag cultivation takes place along the mudflat and are worked by hand. 2 foot by 3 foot plastic mesh bags are spread out along the mudflats and attached to 200-400 foot long lines which are secured to the mudflat by PVC pipes. Lines are spaced no less than eight feet apart to ensure that bags from adjacent lines do not overlap and to provide an area of open substrate between rows of bottom bags.

On average, the lines hold between 100-250 bags per line, and TBOC estimates approximately 5,000 bags are in use on the lease site. Bags are flipped on a weekly or bi-weekly basis using a long hook in order to prevent oysters from growing onto each other or suffocating. The bags, and oysters within, mature for 12 to 24 months until they are a harvestable size. TBOC has removed or intends to remove approximately 3.25 acres of legacy bottom longline gear from areas of the lease that fall outside of CDFW revised boundaries.

Figure-4 3

- j) Revised and additional text in the third and fourth paragraphs of page 15:

Figure-5 4

TBOC's planting, harvest and maintenance would primarily be carried out on its intertidal lease areas during ~~low~~ tides when the cultivation equipment is accessible by boat (longline and tipping bag) or during low tides when bottom bags are exposed and its personnel can walk among it.

Maintenance activities on TBOC's lease areas include periodically inspecting and collecting floating longline and tipping bag cultivation equipment ~~(and flipping, shaking and collecting bottom bags, floating longline or tipping bags)~~ for sorting.

TBOC's lease is also seeking to include cultivation of Kumamoto oyster

(*Crassostrea sikamea*); and Olympic oyster (*Ostrea lurida*), and Manila clam (*Venerupis philippinensis*) on its aquaculture lease but has not yet received approval of that lease amendment by the California Fish and Game Commission. These species are not currently being grown.

- k) Revised and additional text in the second to last paragraph on page 26:

...stocking density used for its cultivation bags (typically less than 200-approximately 300 juvenile or 150 adult oysters per bag)

- l) Additional text in the first, third and last paragraphs on page 30:

...Migrations generally take place in winter and spring months. Salmonid use of eelgrass in Tomales Bay is not well studied; however, in other regions of the West Coast, these species have used eelgrass as temporary foraging habitat during their out-migrations (Rubin, 2018).

...such as black brant, least tern, dunlin, and several species of plover and sandpiper. As examined in the recent analysis for CDP No. 9-21-0561 in Humboldt Bay, disturbance of shorebirds from aquaculture operations are highly variable. Some species, such as brant, are known to be sensitive to disturbance by vessel traffic while other avian species may respond both negatively and positively to the presence of shellfish cultivation gear. As detailed in the comment letter provided to the Commission by the Environmental Action Committee of West Marin, great egret have been shown to positively perceive cultivation equipment for foraging, while others such as dunlin tend to avoid it.

...that are used for bottom bag longlines (which will be spaced a minimum of 8 feet apart); the tens of thousands of PVC posts used to support the floating longline bags (with flotation tubes) and elevated tipping bags and lines/longlines (spaced every 7 feet along the bay: each bag has a 30-inch long, 3-inch diameter flotation tube) and to anchor the bottom bag lines (which have a PVC post at both ends and in the middle).

- m) Additional text to be added to the top of page 36:

Section 30222.5 of the Coastal Act states:

Oceanfront land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

- n) Additional and revised text to be added to the end of the first paragraph on page 36:

...consistent with Sections 30210, and 30220 and 30222.5 of the Coastal Act.

- o) Additional text to be added to the end of page 39:

Rubin, Stephen P., Hayes, Michael C., Grossman, Eric E. 2018. Juvenile chinook salmon and forage fish use of eelgrass habitats in a diked and channelized Puget Sound river delta. Marine and Coastal Fisheries, Volume 10, Issue 4, 435-451. <https://doi.org/10.1002/mcf2.10035>

II. CHANGES TO EXHIBITS

- a) Exhibit 4 added the following text to the end of the exhibit:

While the total area in the above figure adds up to 35.39 acres, deducting areas that have been abandoned (including Tomasini B.L.N) results in the approximately 33 acres TBOC is proposing to use for continued shellfish cultivation, as reflected in the staff report.

- b) Exhibit 5 added an additional area in southeast Tomales Bay (circled in red).



III. RESPONSE TO COMMENTS

On August 5, 2022, Audubon California submitted a comment letter on the proposed project requesting that, as part of its review, the Commission consider prioritizing the health and function of eelgrass habitat, provide protection for the significant bird habitat in Tomales Bay and help ensure sustainable aquaculture practices are carried out. The Environmental Action Committee of West Marin (EAC) also provided a written comment letter on this application. The letter provides information regarding several important biological resources in Tomales Bay that may potentially be affected by the proposed project, including eelgrass habitat, shorebirds and salmonids. In addition, the letter requests a variety of changes and additions to the staff report and recommendation that would address EAC's concerns about adverse impacts to marine biological resources. The proposed changes included above address many of these requested changes and additions. Responses to the remainder are provided below.

- a) A request for a performance bond as a special condition in order to help ensure regulatory compliance and prevent abandonment of aquaculture gear.

A source of aquaculture-related marine debris in Tomales Bay and several other

areas with long histories of shellfish cultivation has been associated with businesses that have ceased operations and left behind large quantities of equipment, cultivation structures, and gear within intertidal or subtidal lease areas. To address this issue and help ensure that funding is available to carry out clean-up of abandoned operations, the California Fish and Game Commission requires – as part of its leasing of state tidelands – that the lessees deposit funds into escrow accounts so that funding is available if an operation ceases prior before recovering and removing its equipment. TBOC has contributed funding to the escrow accounts consistent with this requirement. However, in general, the funds deposited into these accounts have often been based on only rough approximations of clean-up, removal, and disposal costs that do not include detailed or transparent accounting showing how they were estimated. As such, the funds in the escrow accounts for many aquaculture leases may not be sufficient to cover actual clean-up costs in all cases. While staff of the California Fish and Game Commission and California Department of Fish and Game are working to address this issue, some lessees in Tomales Bay have taken steps to proactively develop and document more precise clean-up cost estimates or simply to augment the funds in the escrow accounts for their leases. The availability of these funds - in combination with the requirement in **Special Condition 1** that TBOC seek a permit amendment to remove its cultivation equipment from the bay prior to the expiration of its permit and cessation of its operations – would help ensure that TBOC’s cultivation equipment is ultimately removed from the bay and does not become marine debris. In other words, these measures would help prevent any subsequent holder of TBOC’s lease areas from encountering the same type of debris condition that TBOC’s current management inherited on its lease M-430-05 and which it has committed to address (as memorialized through **Special Condition 3**).

Although the Commission has required performance bonds or other financial surety measures on some prior authorizations for aquaculture facilities, unlike TBOC’s operations in Tomales Bay, those other facilities are not located on state aquaculture leases and thus, did not have existing requirements or other mechanisms for ensuring that aquaculture gear is fully collected and removed upon cessation of operations.

- b) A request that any permit amendment or extension requested by the applicant pursuant to Special Condition 1 should be subject to a public hearing and not processed via permit waiver.

To clarify, proposed amendments to permits (including proposed amendments for extensions) are processed as such (including through a public hearing) and not through issuance of a de minimis permit waiver. As an additional point of clarification, all proposed permit waivers are posted publicly to the Commission’s agenda on the applicable district or division Deputy Director’s Report prior to the hearing (and noticed 10 days in advance for public comment). Members of the public have the ability to comment on any proposed waiver and to provide that input to the Commission prior to its decision to support or object to issuance of a waiver. As such, any new development proposed by TBOC on its state

aquaculture lease would require Commission review and include opportunities for public comment through a public hearing.

- c) A request that the annual report submitted to the Executive Director pursuant to Special Condition 5 be made publicly available within approximately 10 days of its receipt by the Director.

Annual reports can be provided to the public at any time following receipt through a request to Commission staff.

- d) A request to specifically list approved gear types, consistent with the California Fish and Game Commission's prior approval of TBOC's lease.

The gear types, designs and configurations proposed to be used by TBOC and for which it is seeking Commission authorization are described in detail in the project description portion of the staff report. If TBOC seeks to make significant changes to its operation, including use of new gear types or denser configurations, they would be considered on a case-by-case basis and would likely require Commission review and authorization through an amendment to its permit.

- e) A request that the deadline for compliance with Special Condition 10 be reduced.

In order to achieve compliance with Special Condition 10, TBOC may need to install a debris catchment system below the oyster cleaning and processing area on its dock or relocate those operations to another area on its onshore site. Such changes would likely require additional design and permitting work. In order to provide sufficient opportunity for this work to be completed, the timeline for compliance in Special Condition 10 is recommended to be 24 months. Based on discussions between TBOC and Commission staff, TBOC would be unlikely to achieve compliance within a shorter timeframe.