



BOARD OF PORT COMMISSIONERS

JULY 15, 2020

STANDARD AGENDA ITEM 2

VENTURA SHELLFISH ENTERPRISE STATUS REPORT

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 2
Meeting Date: July 15, 2020

TO: Board of Port Commissioners
FROM: Brian D. Pendleton, General Manager
SUBJECT: Ventura Shellfish Enterprise Status Report

RECOMMENDATION:

That the Board of Port Commissioners receive an annual status report on the proposed aquaculture project referred to as the Ventura Shellfish Enterprise (VSE).

SUMMARY:

On September 26, 2018 the Board of Port Commissioners (Board) authorized the General Manager of the Ventura Port District (VPD) to prepare and submit a permit application to the U.S. Army Corps of Engineers (Corps) for use of 2,000 acres of sea water bottom in federal waters near Ventura Harbor in Block 664 and 665, the area generally depicted and described as National Oceanic and Atmospheric Administration (NOAA) Coastal Aquaculture Siting and Sustainability (CASS) Report Alternative 1 for the VSE project. The Board also authorized staff to prepare and submit all other applications to state and federal agencies as required for the VSE project including the California Coastal Commission (Coastal Commission) and prepare all necessary surveys, studies, reports and federal environmental review documents as directed by state and federal agencies as required for the VSE project.

BACKGROUND:

For a detailed discussion of the project origins, goals, objectives, grant history, team members and volunteer partners please see the Board Report dated July 17, 2019 Ventura Shellfish Enterprise Status Report. The report can be found at the District's website at <https://venturaharbor.com/board-meetings-minutes-archive/>.

The Port District is the recipient of a NOAA 2018 California Sea Grant (2018 CA Sea Grant) sub-award of \$266,660. The 2018 CA Sea Grant is a two-year grant, with the following deliverables:

Task 4 - Permit Assignment Strategy

Task 5 - Environmental Review

Task 6 - Shellfish Sanitation

Task 7 - Grower/Producer Compliance Training Program and Information Dissemination

Task 8 - Project Summary

An Annual Report of project activities during the grant year is required to be submitted to CA Sea Grant. Attachment 1 provides a summary of activities related to Tasks 4-7 through June 30, 2020. Task 8 will be completed when the grant concludes. As you will see, the project team has made significant progress over the past 12 months, but there is additional work to be performed in order to complete the permitting process, environmental review, shellfish sanitation, mussel grower selection and training processes. This is due in part by additional permitting requirements as described herein and impacts caused by the Covid-19 pandemic. Given that, the Port District has requested a 1-year, no-cost extension to complete the tasks. For context, this request was approved for the 2015 CA Sea Grant, which was completed over a three-year period. Staff will return to the Board for related 2018 CA Sea Grant contract extension requirements as necessary.

Looking ahead, below are some key observations for the upcoming year in terms of project team goals in meeting the 2018 CA Sea Grant Tasks.

Task 4 – Permit Assignment Strategy

The project team is developing an Operations Plan as part of the Permit Assignment Strategy. The Operations Plan is intended to summarize the terms, conditions, and responsibilities of shellfish growers, the Port District, and other regulatory agencies associated with the VSE project. It has two primary purposes. First, it is intended to clearly describe what responsibilities and conditions will be performed and/or evaluated by shellfish growers, the Port District, and relevant regulatory agencies. In many cases, shellfish growers will be responsible for complying with terms and conditions, will report their compliance to the VPD, who will then compile this information in an annual report submitted to relevant regulatory agencies. Second, the Plan is a consolidated resource for shellfish growers to provide a summary of the VSE project and the terms, conditions, and other information needed to ensure compliance with project requirements. The project team anticipates bringing the Operations Plan to the Board in September for public discussion prior to submission to regulators. After Board review of the Operations Plan, VPD staff will submit the Plan to the Corps and Coastal Commission for review and will resume discussions with the Corps regarding the permitting process to approve shellfish companies within the VSE project upon resolution of the LAFCo issue discussed below.

Task 5 – Environmental Review

In the fall of 2018, the Ventura County Local Agency Formation Commission (LAFCo) contacted VPD to obtain information on the VSE project. LAFCo's concerns related to the fact that the project was to be located outside the existing territorial boundaries of VPD and LAFCo did not have authority to approve the project. The Corps' has paused its consideration of the VSE project pending resolution of this issue. Discussions and outcomes regarding the LAFCo issue are still ongoing with additional detail provided in the Annual Report. VPD staff and legal counsel will provide an update to the Board when there is additional progress to report.

A significant number of environmental reports and studies have been prepared for the project as referenced in the Annual Report, including a Sediment and Water Quality Management Plan; Aquaculture Gear Monitoring & Marine Debris, and Wildlife Entanglement Plan; Predator Control Management Plan; Gear Removal Management Plan; Spill Prevention and Response Plan; an engineering analysis (Evaluation of Mussel Backbone System in Extreme Storms); VPD Sub-Permitting Proposal; Draft Aquaculture Navigation Risk Assessment; and a Draft Operations Plan.

In May 2019, NOAA's National Marine Fisheries Service (NMFS) received a request from the Corps to initiate informal consultation pursuant to Section 7 of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act. In July 2019, NMFS sent the Corps a request for additional information and subsequently provided a notice of consultation close out pending receipt of the additional information. In November 2019, VPD sent the Corps the information requested by NMFS. The informal consultation is expected to resume upon re-initiation of Corps' permit review.

Task 6 – Shellfish Sanitation

With U.S. Coast Guard (USCG) approved sentinel lines now in place at the project site, Coastal Marine Biolabs (CMB) can begin collecting and analyzing data monthly from mussels being grown on these sentinel lines as part of the baseline biotoxin monitoring program. The Cultured Abalone (TCA) obtained the mussels for the sentinel lines and prepared them for deployment. This study is aimed at collecting data prior to project operations that will not only inform the design of the Biotoxin Monitoring and Contingency Plan, but potentially minimize the amount (and cost) of testing imposed on shellfish growers by the FDA.

Task 7 - Grower/Producer Compliance Training Program and Information Dissemination

The project team will continue to research, identify and outreach to prospective shellfish growers that are suitable candidates for participation in the VSE project. The project team will also develop a shellfish grower application process, currently underway, for Board consideration, followed by the development of training programs for growers in consultation with the Corps.

FISCAL IMPACT:

There is no fiscal impact associated with this informational report. The 2018 CA Sea Grant sub-award is \$266,660, of which \$38,862 is remaining. The District's required cost match for the 2018 CA Sea Grant is \$272,210. This cost match is achieved through volunteer contributions of time by Ashworth Leininger Group (ALG), Coastal Marine Biolabs (CMB), The Cultured Abalone (TCA) and District staff plus direct costs incurred by the District. The accounting of these costs and volunteer hours are documented through quarterly financial reports prepared for Board consideration and approval.

Additionally, the Port District has contracted Illuminas Consulting to prepare a project economic and fiscal impact analysis. This work is underway and planned for presentation to the Board in September alongside the Operations Plan.

ATTACHMENTS:

Attachment 1 - Ventura Shellfish Enterprise: Implementing an Integrative Model for New Shellfish Aquaculture Permitting and Production in Federal Waters Proximate to Ventura, California. Project: R/AQ-141; Reporting Period 07/01/2019– 06/30/2020

Ventura Shellfish Enterprise: Implementing an Integrative Model for New Shellfish Aquaculture Permitting and Production in Federal Waters Proximate to Ventura, California.

Project: R/AQ-141; Reporting Period 07/01/2019– 06/30/2020

On September 28, 2018 the Board of Port Commissioners authorized the General Manager of the Ventura Port District to prepare and submit a permit application to the U.S. Army Corps of Engineers (CORPS) for use of 2,000 acres of sea water bottom in federal waters near Ventura Harbor in Block 664 and 665, the area generally depicted and described as CASS Report Alternative 1 for the Ventura Shellfish Enterprise (VSE) project; and, the Ventura Port District prepared and submitted all other applications to local, state and federal agencies as required for the VSE project including the California Coastal Commission; and, prepared all necessary surveys, studies, reports and federal environmental review documents as directed by local, state and federal agencies as required for the VSE project.

The applications were submitted to the CORPS and California Coastal Commission.

Task 4: Permit Assignment Strategy

As noted above, permit applications were submitted to CORPS and the California Coastal Commission and the VPD has engaged in discussions with agency staff regarding clarifications of the project description, proposed conditions, mitigation measures, and monitoring plans. These discussions will be ongoing with regulatory agency staff as they continue to review the permit applications and circulate the applications for public comment and review by other regulatory agencies.

VPD representatives met with CORPS on January 31, 2019 to discuss a sub-permitting framework. Based upon productive discussions with CORPS, VPD submitted a sub-permitting proposal to CORPS on April 12, 2019. VPD subsequently met with CORPS in November 2019 to discuss the proposal, at which point both parties agreed to revisit the proposal after VPD submitted its operations plan, which would provide greater detail regarding how responsibilities and oversight would be shared between the shellfish growers, VPD, and other regulatory agencies. VPD anticipates submitting the draft operations plan for agency review in September 2020, at which time it will resume permitting discussions with CORPS.

Task 5: Environmental Review

Permit applications were previously submitted to the Corps and the CCC and VPD has engaged in preliminary discussions with agency staff regarding clarifications of the project description, proposed conditions, mitigation measures, and monitoring plans.

Specifically, in October 2018 a Coastal Consistency Certification was submitted to the CCC and in November 2018 VPD received a request for additional project information in order to process the permit. VPD submitted responses to the CCC in August 2019. In

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September 2019 the CCC requested additional information. On behalf of VPD, K&L Gates submitted responses to the CCC in February 2020.

A permit application (ENG Form 4345) was submitted to the Corps in October 2018. The Corps requested additional project information in January 2019 and VPD submitted responses in March 2019. The Corps published a Public Notice in August 2019 with an extended 45-day comment period which closed in October 2019. The Corps received a total of 13 comment letters to which VPD submitted a response to comment letters to the Corps in November 2019. In January 2020, the Corps requested two documents in order to continue processing the permit application: (1) a draft navigational risk assessment; and (2) documented resolution with the Ventura County Local Agency Formation Commission (LAFCo), discussed below. Due to the time it would take to produce the requested information, the Corps withdrew the VPD application in February 2020. It is anticipated that once the Corps receives these requested documents the application review process will be re-initiated.

In May 2019 NOAA's National Marine Fisheries Service (NMFS) received a request from the Corps to initiate informal consultation pursuant to Section 7 of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act. In July 2019 NMFS sent the Corps a request for additional information and subsequently provided a notice of consultation close out pending receipt of the additional information. In November 2019 VPD sent the Corps the information requested by NMFS. The informal consultation is expected to be re-initiated upon re-initiation of the Corps' permit review.

In the fall of 2018 LAFCo contacted VPD to obtain information on the VSE project. LAFCo's concerns related to the fact that the project was to be located outside the territorial boundaries of VPD. In such instances LAFCo asserted that special districts like VPD must first request and obtain LAFCo's approval to provide services outside their "jurisdictional boundaries" before proceeding with any such activity.

VPD staff responded that, among other things, the California Harbors and Navigation Code specifically empowers port districts like VPD: i.) to own, lease or dispose of property of every kind "...within or without the district" [Section 6294]; ii.) to "...do any work or make any improvement within or without the territorial limits of the district which will aid in the development or improvement of navigation or commerce to or within the district..." [Section 6301]; and (iii) that LAFCo has no jurisdiction over the VSE project since its jurisdiction over activities of special districts is co- extensive with the boundaries of Ventura County and the VSE project site is located in federal waters outside the county and outside state boundaries.

VPD staff and legal counsel have met and corresponded with LAFCo to explain the extent of federal regulation of such aquaculture projects and the various federal and other agencies with permitting or consulting authority over the VSE project. In February 2020 Assembly Member Monique Limón introduced Assembly Bill 2370 which would authorize the Ventura Port District to construct, maintain, operate, lease, and grant permits for installation, maintenance, and operation of aquaculture plots in federal waters off the

coast of the County of Ventura without LAFCo approval. Discussions and outcomes regarding LAFCo resolutions are still on-going.

Last, it should be noted that based on agency requests and permitting requirements, the following environmental documents were produced during the reporting period (07/01/2019 – 06/30/2020):

- Sediment and Water Quality Management Plan – Dudek, August 2019
- Aquaculture Gear Monitoring & Marine Debris, and Wildlife Entanglement Plan – Dudek, August 2019
- Evaluation of Mussel Backbone System in Extreme Storms engineering analysis – Main Marine Composites, August 2019
- Predator Control Management Plan – Dudek, August 2019
- Gear Removal Management Plan – Plauche & Carr, August 2019
- Ventura Port District Sub-Permitting Proposal – Plauche & Carr, August 2019
- Spill Prevention and Response Plan – Dudek, August 2019
- Draft Aquaculture Navigation Risk Assessment – COWI, June 2020
- Draft Operations Plan – Dudek, June 2020

Task 6: Seafood Safety and Quality

Growing Area Sanitary Survey/Pollution Source Assessment (In Progress)

FDA representatives initiated a pollution source assessment of the proposed growing area during the current grant reporting period. According to FDA representatives, completion of the assessment awaits further refinement through the use of hydrographic modeling, an effort that is now underway. The sanitary survey is nearing formal completion by the FDA and the VSE is now poised to proceed to the next milestone in the sanitation compliance pathway, which involves the creation of a biotoxin monitoring and contingency plan in consultation with FDA representatives. Finalization of this plan will require an analysis of the data collected by CMB through the baseline biotoxin monitoring program (see section below).

Submission and Approval of USCG Private Aids to Navigation Application

During the current reporting period, VSE submitted an application to the USCG requesting approval to suspend growing lines suspended by marker buoys with warning lanterns at the sampling stations outlined in the section above. The application, which contains a detailed schematic diagram of the sentinel line configuration (including marker buoy, top

and bottom leaders, fuzzy rope, mooring chain, swivel, and anchor), was approved by the USCG on October 17, 2019.

Baseline Biotoxin Monitoring Program and Sentinel Deployment

The FDA will articulate mandatory biotoxin testing requirements for mussel growers in the Biotoxin Monitoring and Contingency Plan that will ultimately be developed for the proposed growing area at large. Because no biotoxin data currently exists for the area, the FDA strongly encouraged the VSE to conduct a one-year biotoxin pre-monitoring study. This study is aimed at collecting data prior to project operations that will not only inform the design of the Biotoxin Monitoring and Contingency Plan, but potentially minimize the amount (and cost) of testing imposed on growers by the FDA.

In collaboration with FDA representatives, the VSE team defined a biotoxin pre-monitoring plan that involves the identification and quantification of biotoxin-producing phytoplankton from seawater samples, and the detection of ASP toxin accumulation in tissue obtained from mussel sentinels grown in defined locations within the proposed growing area.

The details associated with the Baseline Biotoxin Monitoring Program (B²MP), including testing locations, strategies, frequency, etc., are outlined in the Revision to Subtask 6 document that was provided to NOAA Sea Grant staff for review and approval. A revision to Subtask 6 was requested during the current grant reporting period which reflects a shift in emphasis from bacteriological testing to biotoxin testing, in accordance with FDA's recommendations. Briefly, the B²MP involves the detection and enumeration of biotoxin-producing phytoplankton in water samples collected adjacent to five mussel sentinel lines, and the detection of biotoxins in tissue extracts obtained from mussel sentinels affixed to these lines. The first sentinel line was deployed on 02/08/2020. Plans to deploy the remaining sentinel lines in April were postponed due to COVID-19 concerns and restrictions. Deployment of the four remaining sentinel lines is now complete.

Creation of an FDA-Approved Testing Laboratory

As noted above, the biotoxin testing protocols that will be performed at the CMB lab in connection with the B²MP (Subtask 6.1) involve the detection and quantification of biotoxin-producing phytoplankton in water samples (using a well-established microscopic detection and enumeration method), and the detection of ASP and PSP toxins in mussel tissue extracts (using commercially available rapid screening kits).

Importantly, both of these methodologies are now NSSP-approved biotoxin management strategies for mussel growers (and both were approved for inclusion in the next revision to the NSSP Model Ordinance). CMB is now finalizing detailed standard operating procedures (SOPs) for the use of these methods. These SOPs will be included in a quality assurance manual that CMB will prepare as a requirement of FDA's testing lab evaluation pathway. We anticipate that the quality assurance manual will be completed and available

for FDA review in September 2020. We will schedule a site visit by an FDA lab evaluation officer after the review of the quality assurance manual is complete.

CMB is also collaborating with FDA and NOAA-SIP on the design of a customized informatics platform for various user groups (e.g., dedicated data managers, mussel growers, product distributors, regulated testing lab personnel, regulatory agencies, and water treatment authorities/agencies, etc.) to organize, manage, validate transmit, review, and certify biotoxin data within a secure and shared online environment and database.

Importantly, the system will be designed with the flexibility necessary to accommodate any organizational structure adopted by the Ventura Port District or any data structure specified in the data management plan that is ultimately developed for the VSE project. Below we summarize some of the key design elements and goals of the system:

1. Provide a user-friendly interface for growers to create site- or lot-specific data records for subsequent validation and FDA/NOAA-SIP review;
2. Ensure compliance with biotoxin data standards established for the VSE project in accordance with the data management plan;
3. Accommodate various NSSP-approved testing methods/strategies through a simplified user console and data form structure;
4. Ensure transparency and traceability in the chain of custody for biological samples and the data obtained from such samples;
5. Provide a streamlined mechanism for regulatory agencies to review and certify biotoxin data obtained from VSE growing areas, and to issue rapid notifications on the disposition of quarantined product; and,
6. Facilitate the rapid transmission of system-wide alerts by various agencies and authorities (e.g., water treatment facility containment failures, toxic chemical spills, oil spills, notifications of closures, etc.).

Task 7: Grower/Producer Compliance Training Program and Information Dissemination

Subtask 7.1: Grower/Producer Outreach and Inclusion

To secure grower/producer tentative commitments, the VPD is undertaking three main work streams: (1) research and identify prospective local, regional, national, and international grower-producers that are suitable candidates for participation in the VSE project; (2) provide direct engagement with potential grower/producers; (3) develop a VPD approved grower/producer application process. Work began in September 2018.

Work stream (1) is well underway with the development of a database framework to input contact data for prospective grower-producers as described above and the initiation of research to identify suitable candidates. Work stream (2) is on-going with more robust engagement contemplated as the project moves through the entitlement process. Works stream (3) will be developed in consultation with the CORPS, who is the permitting authority for the project. A framework for regulatory oversight and sub-permitting is

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underway with CORPS. It is anticipated this work stream will be completed during the grant period of September 2020 to August 2021.