

# Exhibit B

Petitioners' Letter to EPA and Response  
to Federal Respondents' Motion for  
Partial Remand Without Vacatur

*In re: NPDES Appeal No. 25-01M*  
*NPDES Permit No. FL0A10001*  
*Sender: mcufone@recirculatingfarms.org*

June 7, 2023

**Via E-mail**

Craig Hesterlee, Chief  
NPDES Permitting Section  
EPA Region 4, Water Division  
[hesterlee.craig@epa.gov](mailto:hesterlee.craig@epa.gov)

Kip Tyler, Environmental Engineer  
NPDES Permitting Section  
EPA Region 4, Water Division  
[tyler.kip@epa.gov](mailto:tyler.kip@epa.gov)

**Re: EPA's Consideration of Applicant-Proposed Modifications to NPDES Permit  
FL0A00001 (Ocean Era, Inc.)**

Dear Mr. Hesterlee and Mr. Tyler,

I am writing on behalf of my clients—Food & Water Watch, Recirculating Farms Coalition, Center for Food Safety, Sierra Club, Healthy Gulf, Suncoast Waterkeeper, and Tampa Bay Waterkeeper—in connection with the Environmental Protection Agency's ("EPA") consideration of modifications to National Pollutant Discharge Elimination System ("NPDES") Permit FL0A00001. EPA issued this permit to Ocean Era, Inc. ("Ocean Era") in September 2020, and re-issued the permit in revised form on June 8, 2022 after a remand from EPA's Environmental Appeals Board ("EAB") on May 6, 2022 in Appeal No. 20-09. *See In re Ocean Era, Inc.*, 18 E.A.D. 678 (EAB 2022). This permit authorizes a precedent-setting offshore aquaculture facility to be constructed and operated in federal waters in the Gulf of Mexico.

My clients currently have a pending lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit that challenges various actions and omissions by the EPA (and its EAB). However, we recently agreed to stay that litigation for 90 days while EPA considers how to proceed after Ocean Era proposed major modifications to key terms of the NPDES permit. In particular, on May 10, 2023, Ocean Era expressly acknowledged that it does "not intend to implement the project as currently permitted (i.e., with almaco jack or a SPM net pen system)," and instead requested to alter both the species of fish proposed to be raised by Ocean Era (changing from almaco jack to red drum), and the type of net pen system utilized for the facility (changing from a swivel-point mooring system to a grid mooring system).

Although Ocean Era self-servingly asserts that "[n]o appreciable changes in fish production numbers are anticipated" and "[o]nly minor changes in the submersible net pen design are anticipated," it is incumbent on EPA to independently scrutinize the project proponent's representations and conduct a thorough examination of any new impacts that could result from these notable changes. Indeed, under any metric, it is impossible to conclude that

these alterations to arguably the two most important variables for an offshore aquaculture facility somehow constitute “minor modifications,” which are limited to truly minor alterations such as correcting typographical errors or noting a change in ownership. *See* 40 C.F.R. § 122.63.

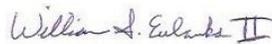
Accordingly, we hereby call upon EPA to exert its jurisdiction and authority under the Clean Water Act to revoke NPDES Permit FL0A00001 in its entirety, in light of Ocean Era’s explicit admission that it will not—indeed, as a practical matter, it *cannot*—implement the project as currently permitted. *See* 40 C.F.R. §§ 122.62, 122.64, 124.5. As made clear by EPA’s prior environmental review for this facility, the agency has never considered the impacts of, or alternatives to, either the use of red drum or a grid mooring system. Thus, in order to avoid an almost literal bait-and-switch, it is imperative that EPA provide the public with a transparent, new permit decisionmaking process on the basis of Ocean Era’s new proposal, accompanied by compliance with the full suite of applicable laws including the Clean Water Act, the National Environmental Policy Act, and the Endangered Species Act. In the absence of such compliance, EPA’s action will be highly vulnerable to additional legal challenges for failing, again, to adhere to our nation’s bedrock laws for protecting the marine environment.

At minimum, EPA must reopen its permitting process with respect to the new aspects of the proposal (i.e., the shifts to red drum and a grid mooring system), and ensure that those issues are properly subjected to supplemental analysis under applicable laws and an accompanying, full public process. Of course, whether EPA revokes and considers reissuing Ocean Era’s permit or whether it instead merely reopens certain aspects of the existing permit, EPA must ensure that the public (including my clients) may meaningfully participate in the permitting process. *See, e.g.*, 40 C.F.R. § 124.10.

## CONCLUSION

We look forward to better understanding how EPA intends to proceed, as well as any other relevant information that you can provide about the agency’s schedule or process for addressing Ocean Era’s proposed permit changes. Please send any response to this letter via email to [bill@eubankslegal.com](mailto:bill@eubankslegal.com). Thank you for your consideration of this matter.<sup>1</sup>

Respectfully submitted,



William S. Eubanks II  
Owner & Managing Attorney  
EUBANKS & ASSOCIATES, PLLC

***CC (via email):***

Lucy Brown  
U.S. Department of Justice, ENRD  
[Lucy.E.Brown@usdoj.gov](mailto:Lucy.E.Brown@usdoj.gov)

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<sup>1</sup> Please include this letter in EPA’s formal administrative record for the new permitting decision.

Frederick Turner  
U.S. Department of Justice, ENRD  
[Frederick.Turner@usdoj.gov](mailto:Frederick.Turner@usdoj.gov)



However, the Food & Water Watch Petitioners want to make clear their position that the proper course of action during voluntary remand is for EPA to revoke (and, if warranted, reissue) the Permit as a whole, rather than merely reopen only “narrow and focused” aspects of the Permit. Although this issue is not currently before the Court, the Food & Water Watch Petitioners deem it important state their position on the record both in an effort to avoid unnecessary, future litigation over this issue and to ensure that this issue is preserved in the event EPA fails to revoke the Permit and/or reopen the entire Permitting process based on these admittedly “important changes to the Permit.” Mot. at 1.

Respectfully submitted,

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