



ESTABLISHED 1971

Board of Directors

Bridger Mitchell, Ph.D.
President

Ken Drexler, Esq.
Vice-President

Terence Carroll
Treasurer

Cynthia Lloyd, Ph.D.
Secretary

Sarah Killingsworth, Esq.
Director

Jerry Meral, Ph.D.
Director

Mairi Pileggi, Ph.D.
Director

Claire Seda
Director

David Weinsoff, Esq.
Director

David Wimpfheimer
Director

Staff and Consultants

Morgan Patton
Executive Director

Ashley Eagle-Gibbs, Esq.
Conservation Director

Jessica Reynolds Taylor
Development Director

William Hubert
Education Coordinator

Patricia Wimpfheimer
Bookkeeper

Catherine Caufield
Tomales Dunes Consultant

July 7, 2020

Senator Scott Wiener
State Capitol, Room 5100
Sacramento, CA 95814-4900
Via Electronic Delivery to: Angela Hill,
Legislative Director
(Angela.hill@sen.ca.gov)

Senator Tom Umberg
State Capitol, Room 3076
Sacramento, CA 95814
Via Electronic Delivery to: Aria
Ghafari, Legislative Director
(Aria.Ghafari@sen.ca.gov)

Re: EAC Comments re. Oppose SB 1093

Dear Senators Wiener and Umberg,

The Environmental Action Committee of West Marin (EAC) is based in Point Reyes Station and has been working to protect the unique lands, waters, and biodiversity of West Marin since 1971. Since our inception, we have been committed to the health of West Marin's estuaries, bays, and watersheds including our strong focus on Tomales Bay. As part of our Healthy West Marin Watersheds campaign, we take an active role in monitoring state and local aquaculture, as well as supporting sustainable aquaculture and working with local growers in Tomales Bay whenever possible. We submit this letter on behalf of our approximately 1,200 members.

Thank you for withdrawing Senate Bill (SB) 1093 during this challenging legislative session. As we imagine a similar bill may be reintroduced at a later date, we submit this comment letter detailing our concerns related to SB 1093 or any similar bill.

We are very concerned with this bill's proposal to eliminate the California Coastal Commission (CCC)'s regulatory authority over marine aquaculture in the state and transfer that authority to the Department of Fish and Wildlife (Department) and the Fish and Game Commission. Our main concerns, discussed more below, include the Department's history of minimal oversight, their limited statewide authority, and lack of regulatory capacity. We are also concerned that this may be inconsistent with Coastal Act implementation and point out the CCC's strong regulatory authority and history of oversight.

Finally, we raise concerns regarding the bill's large mandated acreage and around the benefits of restoration versus harvesting related to carbon sequestration.

I. The Department has a History of Minimal Oversight, Limited Statewide Authority, and Lacks Regulatory Capacity.

Historically, the Department and the Fish and Game Commission have provided very minimal oversight over state aquaculture operations. Although oversight is increasing, this industry has been largely unregulated for decades. Lease fees are low and escrow accounts are limited or non-existent. We have observed marine debris issues in Tomales Bay since at least 2015, which is when we began advocating for Best Management Practices to the Fish and Game Commission. While the Fish and Game Commission has acknowledged the importance of an effort such as this, this process has largely been put on hold.

Also, the Department does not have statewide authority in all areas, including the Humboldt Harbor District and other areas in California, including the Port of San Diego and the Agua Hedionda Lagoon in Carlsbad, leaving a significant regulatory gap. In addition, by delegating all mariculture permitting responsibility to the Department, SB 1093 fails to recognize the staffing and budgetary limitations the agency is currently facing and will likely continue to face.

The Fish and Game Commission recently adopted a six-month hiatus on receiving new aquaculture lease applications at their June 2020 meeting, largely due to staffing constraints and the inability to keep up with the three applications they have recently received, some of which they have had for over two years.

Considering the regulatory gaps and the Fish and Game Commission's own action to halt receipt of new lease requests, it does not appear that this agency is well poised to take on regulatory compliance and oversight for the entire state.

II. The Bill's Approach May be Inconsistent with the Coastal Act.

SB 1093 proposes a transfer of all responsibilities and duties over shellfish, seaweed, and low-trophic mariculture protection and restoration from the CCC to the Department and Fish and Game Commission. However, neither the Department nor the Fish and Game Commission are charged with implementing and enforcing the Coastal Act. The CCC is the historic authority tasked with upholding the Act and approving any and all coastal development through the use of Coastal Development Permits (CDPs). SB 1093 is shifting regulatory authority over the Coastal Act to the Department, which appears to be in direct opposition to the Act itself, which broadly defines coastal development.¹

III. The California Coastal Commission Possesses Regulatory Strength, a Consistent Approach, and a Strong Public Process.

While the Department has put the Best Management Practices rulemaking process on hold, the CCC has stepped in to provide enforceable special conditions as part of their CDPs. This is one of many examples

¹ CA Pub. Res. Code § 30106.

July 7, 2020

EAC Comments re. Oppose SB 1093

Page 3 of 4

of the CCC's strong history of consistent oversight of coastal development. The CCC has undergone an effort to ensure all state aquaculture CDPs are current and include consistent and enforceable permit conditions and has nearly completed a full overhaul of aquaculture CDPs for the state with minimal staff devoted to this project.

In addition, the CCC's public participation process is quite effective. The CCC has invested in public participation to increase transparency and participation based on the nature and complexity of development activities. Agendas and staff reports are consistently posted prior to the comment deadline, and their online interface is easy to navigate and locate records for public review of proposed development activities within the Coastal Zone.

Based on these factors, as well as the CCC's strong reputation in upholding California coastal regulation, this bill does not represent the best interests of California citizens in the protection of our coastal resources. While there have been some improvements in aquaculture industry practice overall, absolving the most active agency from oversight does not lend itself to enforcement of the laws.

IV. The Annual Area for Aquaculture Proposed is Very Large and May Conflict with Other Efforts.

While we want to make it clear that we support sustainable aquaculture and understand there is a desire to expand this industry, we are concerned about the large area proposed in this bill (5 square miles of parcels of 300 square meters each). While we appreciate that the proposed area also includes restoration, the division is unclear. For instance, would 4 plus square miles of commercial operations be proposed alongside 300 square meters of restoration?

Overall, there is a significant area of the ocean proposed, which may conflict with other bills and efforts which aim to protect more marine areas and our already threatened biodiversity. As we face a changing climate, acidification, deoxygenation, species loss, and other threats to our coastal ecosystems, we must be even more protective of these valuable and irreplaceable resources.

V. The Carbon Sequestration Benefits of Restoration are More Significant than the Benefits from Frequently Harvested Sea Plants.

The bill cites the benefits of blue carbon sequestration provided by seaweed, and the potential for mariculture to play a significant role in reversing the environmental threats of climate change. While we strongly support the benefits of restoration and blue carbon, we would like to point out that all projects are not created equally. For instance, the longer-term sequestration benefits of carbon sink ecosystem restoration and conservation may outweigh the shorter-term benefits of continuously harvested seaweed.

While seaweed may extract carbon from the atmosphere, this process does not result in direct blue carbon sequestration.² To play a significant role in long-term sequestration of blue carbon, ecosystems must have the opportunity to store captured carbon and bury it in sediment, contributing to permanent

² Duarte CM, Losada IJ, *et al.* *The Role of Coastal Plant Communities for Climate Change Mitigation and Adaptation.* Nature Climate Change. 2013; 3: 961–968. doi: 10.1038/nclimate1970.

July 7, 2020

EAC Comments re. Oppose SB 1093

Page 4 of 4

carbon sequestration. This means that the continuous harvesting of kelp and seaweed products is a means of carbon capture, but not necessarily as effective as long-term restoration and conservation efforts, where environments such as seagrass or salt marshes can capture and deposit external carbon into the sediment. Further, human activities that disturb or expose sediments of seagrass ecosystems may accelerate erosion and reduce carbon stock accumulated in soils over long periods of time.³

These factors should be carefully considered and researched when evaluating allocation of restoration and mariculture systems along the coast.

Furthermore, we have already lost significant kelp resources, and the Fish and Game Commission is currently reviewing and revising the commercial kelp regulations. We must be very protective of this threatened resource.

Thank you for your review of our comments related to our concerns around SB 1093 and any similar future bills. We would like to schedule a follow-up meeting with you to further discuss our thoughts and considerations regarding marine aquaculture regulation, specifically in Tomales Bay, and to highlight our support for the continued mariculture oversight by the CCC along the California coast.

Respectfully,



Morgan Patton
Executive Director



Ashley Eagle-Gibbs, Esq.
Conservation Director

cc: Tate Hanna, Scheduler for Senator Scott Wiener
Senator Mike McGuire
Tom Weseloh, Chief Consultant, Joint Committee on Fisheries and Aquaculture

³ Mcleod, Elizabeth, *et al.* *A Blueprint for Blue Carbon: toward an improved understanding of the role of vegetated coastal habitats in sequestering CO₂*. *Frontiers in Ecology and the Environment*. 2011; 9(10): 552-560, doi:10.1890/110004.