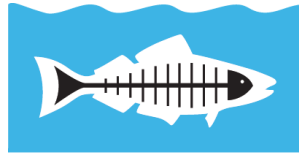


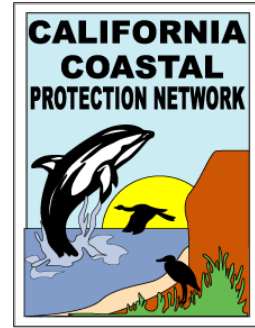
west
marin

environmental
action
committee



Heal the Bay

COASTWALK
California
COASTAL TRAIL
ASSOCIATION



Friends of
the Earth



environmental
DEFENSE CENTER



March 26, 2021

Honorable Assembly Member Eduardo Garcia
Chair, Assembly Water, Parks, and Wildlife Committee
Legislative Office Building
1020 N Street, Room 160
Sacramento, CA 95814

Re: AB 303 (Rivas) Aquaculture: mariculture production and restoration - OPPOSE

Dear Assembly Member Eduardo Garcia,

The undersigned organizations have extensive knowledge of marine resources off the California coast and experience navigating the various laws and policies associated with coastal and marine development. We are very aware of the competing uses that our coastline faces, including recreation, energy generation, commercial industries, navigation, restoration, etc. Proactive planning is needed to effectively coordinate all of these competing uses and review cumulative impacts and conflicts with a coordinated agency approach.

Together, we write in opposition to Assembly Bill (AB) 303's Aquaculture: mariculture production and restoration: pilot program. This bill would drastically increase the acreage available for aquaculture in California alongside a worrying decrease in oversight. Aquaculture is one of the fastest growing forms of food-production and has become a significant part of the global system, but it must be properly developed and managed.¹ Aquaculture can potentially cause many adverse ecological effects, such as the loss or modification of habitats, introductions and transfers of species or diseases, the use of antibiotics and chemicals, coastal pollution, salinization of soil and water.²

¹ See Seth J. Theuerkauf, et. al., *A Global Spatial Analysis Reveals Where Marine Aquaculture Can Benefit Nature and People*, October 9, 2019, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0222282#sec009>.

² See J.H. Primavera, *Overcoming the Impacts of Aquaculture on the Coastal Zone*, *Ocean & Coastal Zone Management*, Vol. 49, Issues 9-10, 2006, <https://www.sciencedirect.com/science/article/abs/pii/S0964569106000755>.

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 almost exclusively to the California Department of Fish and Wildlife (Department). The Legislature has already recognized the CCC's important role to provide regulatory oversight over aquaculture using a consistent approach and a strong public process. Our additional concerns, discussed more below, include the need to prioritize careful environmental review (which is not possible in four months), the large area proposed, the limited regulatory oversight over the pilot areas, continued challenges faced by the Department, potential inconsistencies with the California Coastal Act (Coastal Act), conflicts with other statewide efforts, and what happens when the pilot process ends.

I. Adequate Environmental Review Should be Prioritized for Aquaculture Permits, Which is Not Possible Within Four Months; and the Proposed Pilot Area is Approximately 10 Times Bigger than Current Lease Area in Use.

Environmental review should be a priority for these projects considering that AB 303 states increasing coastal resiliency, conservation, and restoration as some of its purposes. AB 303 § 846(c) provides only a four month deadline for the State Lands Commission or the Fish and Game Commission to “prepare, review, and either approve or deny a water bottom lease or ground lease.” This unrealistic deadline for a decision within four months of receiving a complete application eliminates the potential for environmental review.

Furthermore, the permitting process should not be simplified for aquaculture permits if that means eliminating meaningful environmental oversight and compliance. AB 303 § 829 requires the Department to consider ways to streamline Army Corps of Engineers permits within the state for aquaculture projects. Considering the many potentially adverse impacts of aquaculture, these projects should receive individualized environmental review, as is now required under the California Environmental Quality Act (CEQA).

AB 303 § 845(b) provides that pilot program sites may be cultivated with no permits, except any permit required by the State Water Resources Control Board. This lack of permitting will allow lessees to operate with minimal environmental oversight and accountability.

Considering that AB 303 proposes to open up a minimum of 9.65 square miles (or 6,177 acres) of California's oceans and estuaries to aquaculture projects, this lack of environmental review could have disastrous consequences. Currently, California commercial marine aquaculture lease area in use is estimated at 574 acres of the state's waters.³ Furthermore, the state's estuaries and coastal waters are

³ California Department of Fish and Wildlife, *The Status of Commercial Marine Aquaculture in California*, Final Report to the California Fish and Game Commission, May 2020, Table 2-1, p. 22 of the PDF available at, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=180517&inline>

already facing ocean acidification, biodiversity losses,⁴ sea level rise, and other threats. In light of all of these ongoing challenges, cumulative impacts must be closely considered.

II. AB 303 Appears to Provide too Much Authority to Local Governments with Minimal Oversight.

AB 303's authorization to local governments to apply for shellfish and seaweed mariculture and restoration leases and designate sublessees without authorization from the Department, State Lands Commission, or the Fish and Game Commission is a dangerous gamble. Section 846(e) provides that local governments holding mariculture and restoration leases may designate individual mariculturists as sublessees without outside authorization or oversight. Section 846(e) requires that local governments notify the Department, the State Lands Commission, or the Fish and Game Commission of the sublease within two months of its beginning. Notifying one of three departments within two months of the beginning of their sublease does not provide nearly enough opportunity for oversight. Moreover, AB 303 would allow lessees to begin cultivation without any permits (beyond those required by the State Water Resources Control Board).

AB 303 also provides no guidelines or requirements for these local governments as they choose their sublessees. This is a potentially dangerous omission, as local governments may not have the resources or technical expertise to properly site, approve development, or be able to ensure an adequate public process or proper implementation of best management practices.

III. The Department Faces Challenges Related to Minimal Oversight, Limited Statewide Authority, Lack of Regulatory Capacity and Insufficient Budget.

In the past, the Department and the Fish and Game Commission has 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. The Environmental Action Committee of West Marin (EAC) has observed marine debris issues in Tomales Bay since at least 2015, which is when it began advocating for Best Management Practices to the Fish and Game Commission. While the Fish and Game Commission has acknowledged the importance of this effort, this process is 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.

⁴ Shorebird decline is well documented. Nils Warnock, et al., *Declining wintering shorebird populations at a temperate estuary in California: A 30-year perspective*, Vol. 123, American Ornithological Society, February 10, 2021; see also CDP Guidance CDP Application Guidance, December 2020, https://documents.coastal.ca.gov/assets/cdp/CDP%20Application%20Guidance_12.08.20.pdf, p. 36.

In addition, by delegating all mariculture permitting responsibility to the Department, AB 303 fails to recognize the severe staffing and budgetary limitations the agency is currently facing and will likely continue to face. The Department's budget constraints are well-established and the Legislature recently provided \$4 million to the Department for them to undertake a Service Based Budget Review identifying any gaps between its mission level of service and current service levels. The 2021 final report indicates that the two most underinvested categories of service (environmental permitting and protection and species and habitat conservation) are underfunded to the tune of 71 percent and 74 percent.

Last year, the Fish and Game Commission 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 new applications they have recently received, some of which they have had for over two years. This hiatus was continued in December 2020. At the March 16, 2021 Marine Resources Committee meeting, Department and Fish and Game Commission staff indicated that some progress has been made and that they support lifting of the hiatus. This will likely take place at the April 2021 Fish and Game Commission meeting. However, the Department still indicates that they are suffering from severe capacity constraints, and an unprecedented number of current lease amendments (12 out of 17), some of which include boundary adjustments.⁵ The boundary adjustments in some cases are needed as the current leaseholders are currently operating outside of their leased area. The staff report states, "the principle limiting factor that prevents advancing requests more quickly is resource capacity, a constraint that is not anticipated to change in the near-term."⁶

Considering the regulatory gaps and the Fish and Game Commission's own recent 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. Also, the Fish and Game Commission does not possess the regulatory authority to be compensated by applicants for the costs of the CEQA process, unlike many other state agencies.

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

AB 303 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). AB 303 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.⁷ It is also unclear how and whether authority is being absolved from the many other involved agencies including the California Department of Public Health, the Army Corps of Engineers, the local counties, etc.

⁵ See Fish and Game Commission Marine Resources Committee meeting, Item 4, March 16, 2021, <https://fgc.ca.gov/Meetings/2021> and Randy Lovell, State Aquaculture Coordinator's presentation; and Meeting Documents, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=189226&inline>.

⁶ Fish and Game Commission Marine Resources Committee meeting, Item 4 (p. 3 or 16 of the PDF), March 16, 2021, Meeting Documents, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=189226&inline>.

⁷ CA Pub. Res. Code § 30106.

V. The California Legislature Has Already Recognized the Important Role of the Coastal Commission to Provide Regulatory Oversight Over Aquaculture Using a Consistent Approach and a Strong Public Process.

The State Legislature expressly recognized the importance of the CCC's role in enacting SB 262 (2019)⁸, requiring the CCC, in consultation with the Department, to develop a comprehensive guidance for aquaculture applicants. The CCC successfully and collaboratively completed the CDP Application Guidance in 2020 as required,⁹ which is a valuable tool for permit applicants. This shows the importance of the CCC in aquaculture permitting and coordination. SB 262 describes the purposes of the guidance in § 30612.5:

- To reduce duplicative or overlapping information requirements during permit application filing.
- (2) To increase state and federal agency coordination.
- (3) To increase regulatory certainty.
- (4) To reduce the time and cost associated with securing a coastal development permit, to the extent possible.

The purposes of this guidance also seem similar to some of the purposes of AB 303. But, as this guidance was only recently adopted, we have yet to see whether these purposes will be fulfilled.

In addition, the CCC has a consistent approach to aquaculture permitting and a strong public process. For instance, 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 of the CCC's strong history of consistent oversight of coastal development.

With minimal staff devoted to the project, the CCC has undergone a comprehensive statewide effort to ensure all aquaculture operations in state waters have appropriate CDPs and include consistent and enforceable measures to protect coastal and environmental resources. CCC staff estimates that the CCC has successfully issued or updated approximately 37 CDPs for aquaculture operations over the past six years (2015-2021), with over 95% processed as administrative or consent calendar items. Six to ten CDPs were processed per year between 2017-2020.

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.

Contrasting this to the proposed oversight of sublessees under § 846(e), it is clear that the CCC is better-equipped to handle this pilot program, assuming it is willing. Under § 846(e), one of three government agencies will be notified of a sublease within two months of its inception. This will confuse the

⁸ SB 262 Marine resources: commercial fishing and aquaculture: regulation of operations (2019), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB262.

⁹ California Coastal Commission, CDP Application Guidance (CDP Guidance), December 2020, https://documents.coastal.ca.gov/assets/cdp/CDP%20Application%20Guidance_12.08.20.pdf.

regulatory framework by reducing accountability to any one agency or permit program and increase administrative uncertainty. Meanwhile, an unreviewed sublessee will have free reign over a tract of ocean or estuary for a minimum of two months. Considering aquaculture's potential harms to ecosystems, this is an alarming prospect.

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.

VI. 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 and improve agency coordination, we are concerned about the large area proposed in this bill (a minimum of five, 500-hectare tracts of estuary or ocean, which is 9.65 square miles (or 6,177 acres)). While we appreciate that the proposed area also includes restoration, the division is unclear. For instance, would nine-plus square miles of commercial operations be proposed alongside 500 square meters of restoration? Bull kelp forest restoration is proposed but only at a minimum of one site or is it only required to be a site that requires restoration? The language is unclear.

Overall, there is a significant area of our oceans and estuaries proposed for aquaculture development, which may conflict with other bills and efforts which aim to protect more marine areas and our already threatened biodiversity including the state and federal 30x30 efforts including Executive Order N-82-20, which is referenced in AB 303.¹⁰ 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. AB 303 itself states that environmental conditions are changing in Section 1(a)(5).

VII. AB 303 is Premature and May be Inconsistent with Other Ongoing State Agency Aquaculture Planning.

Many state agencies are working together on aquaculture regulation. As discussed above, the CCC successfully completed the CDP Application Guidance¹¹, with much stakeholder input, which is a valuable tool for applicants. In addition, an Aquaculture Information Report¹² has been developed by the Department. The Ocean Protection Council is working on an aquaculture action plan, and aquaculture principles are nearing completion, the result of careful collaboration among many state agencies. Rather than building on these strong coordinated efforts, AB 303 disrupts and omits certain agencies from a collaborative process, which is already underway.

¹⁰ Executive Order N-82-20, <https://www.gov.ca.gov/wp-content/uploads/2020/10/10.07.2020-EO-N-82-20-.pdf>.

¹¹ California Coastal Commission, CDP Application Guidance (CDP Guidance), December 2020, https://documents.coastal.ca.gov/assets/cdp/CDP%20Application%20Guidance_12.08.20.pdf.

¹² California Department of Fish and Wildlife, The Status of Commercial Marine Aquaculture in California, Final Report to the California Fish and Game Commission, May 2020, pp. 22-68 of the PDF *available at*, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=180517&inline>.

VIII. It is Unclear What Will Happen When the Pilot Process Ends.

Without adequate oversight, clean up costs, or escrow accounts, what will happen if any one of these large projects fails? Historical examples highlight some of the challenges and environmental impacts of the aquaculture industry, such as extensive clean up after operational closure,¹³ which can leave behind lasting impacts to habitat, and in extreme cases, there have been threats to public health and safety.¹⁴

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

The bill cites the benefits of 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.¹⁵ 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 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.¹⁶ These factors should be carefully considered and researched when evaluating allocation of restoration and mariculture systems along the coast.

AB 303's goals are admirable and worthwhile, but opening the door to such a pilot program with minimal oversight threatens to do more harm than good to California's coastal habitats and biodiversity. Rather than cutting out agencies, it makes more sense to increase collaboration to streamline the process while still upholding the state's hard fought environmental regulations. Thank you for your review of our comments related to our concerns with AB 303.

Sincerely,

¹³ Guy Kovner, The Press Democrat, "More work ahead to restore estero after Drakes Bay Oyster Co. departure," January 9, 2016, <https://www.pressdemocrat.com/article/news/more-work-ahead-to-restore-estero-after-drakes-bay-oyster-co-departure/?ref=related>; See also California Coastal Commission, Staff Report and Findings for Consent Cease and Desist Order No. CCC-07-CD-11 showing unpermitted operations, December 12, 2007.

¹⁴ Rob McMillan, ABC7, "Hidden danger off SoCal coast leads to tragic death of Orange County man who was fishing," December 10, 2019, <https://abc7.com/hidden-danger-off-socal-coast-leads-to-tragic-death-of-oc-man/5745369/>

¹⁵ 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.

¹⁶ 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.

March 26, 2021
Oppose AB 303

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