



Heal the Bay  
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environmental  
action  
committee



June 30, 2022

Wildlife Aquaculture Program  
California Department of Fish and Wildlife  
P.O. Box 944209  
Sacramento, CA 94244-2090  
*Via Electronic Mail: [aquaculturePrgm@wildlife.ca.gov](mailto:aquaculturePrgm@wildlife.ca.gov)*

Fish and Game Commission Marine Resources Committee  
California Fish and Game Commission  
P.O. Box 944209  
Sacramento, CA 94244-2090  
*Via Electronic Mail: [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov)*

Re. FGC MRC Agenda Item 4 (*Aquaculture leasing in California – public interest determination*);  
Criteria for FGC's finding "in the public interest" for considering new aquaculture leases

Dear Mr. Lovell, Department staff, and Commissioners,

Thank you for the opportunity to provide feedback on the draft criteria for “the public interest” finding that is mandated by Fish and Game Code Sections 15400 and 15404 regarding state water bottom leases for aquaculture. We, the undersigned organizations, have extensive experience in marine and aquaculture policy in the state of California. We have been supportive of the development of public interest aquaculture criteria before accepting any new leases.

We are grateful to see a fairly robust draft list that captures California's coasts and oceans' complex and sometimes conflicting functions. In addition to providing a marked-up version of the draft criteria circulated by Mr. Lovell, we have included some general comments and requests for clarification below.

### **Clarify that Criteria Do Not Apply to Finfish**

As an initial point, our understanding is that these proposed criteria do not apply to finfish aquaculture, which is not currently permitted in state waters without the completion of a programmatic planning process. Therefore, we have not fully addressed concerns related to finfish mariculture in our review of the public interest criteria. We request that the criteria explicitly state that it does not apply to finfish, which is currently prohibited. Of course, if finfish are later included in the criteria, we would have additional suggestions at that time.

### **Distribution**

Regarding public participation, these criteria should be made publicly available and distributed widely to stakeholders of all types including environmental NGO groups. For instance, the draft criteria should be posted in the meeting documents for the July Marine Resources Committee meeting, circulated broadly to all stakeholders, and made available on the aquaculturematters website.

### **Constraints and Considerations**

We would appreciate more clarity on how the presence of Constraints and Considerations will impact the decision to issue a lease. For example, where the lease is in a Constraint area, will the lease not move forward? Furthermore, while the Considerations list is robust, we are concerned that Considerations may be given a lower weighting individually, and a lease may still move forward in the presence of Considerations. Many of these Considerations are very important and are also mandated by regulations. We have two recommendations to ensure that Considerations are appropriately weighted.

First, view Considerations as prohibitions in most cases, requiring written exceptions for good cause and public benefit. Second, establish a mechanism for viewing Considerations collectively. It is critical to value and quantify the direct, indirect, and cumulative impacts of lease activities and Considerations. When viewed individually, it may not make sense to bar a lease application based on a Consideration. However, when the various Considerations are reviewed together, the lease may have a severe impact on coastal communities, economies, and ecosystems. Therefore, it may not meet the public interest criteria.

As a specific comment which is also included in the enclosed redline, the first two bulleted Considerations listed might be more appropriate as Constraints.

### **Best Management Practices**

We strongly agree that lease activities should be consistent with established best management practices. Our concern, however, is that the aquaculture industry does not have clearly defined best management practices despite many of our organizations advocating for this process to take place. While we understand that the Department of Fish and Wildlife (Department) and the Fish and Game Commission have many competing priorities, we feel that it is imperative that work is resumed on the best management practices rulemaking process. Until then, one interim solution to the lack of established best management practices is to ensure that the newly issued leases are consistent with past coastal development permit conditions issued for similar leases.

**Assess Workload and Staffing Needs**

We encourage the Department to continue to assess the workload required to issue leases and monitor lease compliance and enforcement to ensure they have adequate capacity to expand this workload. We are concerned that the issuance of new leases will add to the workload of already saturated staff.

**Conclusion**

We look forward to the July Marine Resources Committee meeting and continued engagement opportunities on this topic including a workshop. Thank you for the consideration of our comments.

Sincerely,

Ashley Eagle-Gibbs, Legal and Policy Director  
Environmental Action Committee of West Marin

Chance Cutrano, Director of Programs  
Resource Renewal Institute

Barak Kamelgard, Staff Attorney  
Los Angeles Waterkeeper

Emily Parker, Coast and Marine Scientist  
Heal the Bay

Benjamin Pitterle, Science and Policy Director  
Santa Barbara Channelkeeper

cc: Susan Ashcraft, Senior Environmental Scientist and Marine Advisor, California Fish and Game Commission  
Sara Briley, Environmental Scientist, California Department of Fish and Wildlife  
Randy Lovell, State Aquaculture Coordinator, California Department of Fish and Wildlife  
Kirsten Ramey, Senior Environmental Scientist Supervisor, California Department of Fish and Wildlife  
Craig Shuman, Marine Region Manager, California Department of Fish and Wildlife

**Enclosure:** Redlined aquaculture public interest criteria draft

**California Department of Fish and Wildlife**  
**Initial Draft Criteria for Public Interest Determination**  
**by the California Fish and Game Commission for New State Water Bottom Leases**

California Fish and Game Code (FGC) Section 15400 requires the Fish and Game Commission (Commission) to determine that a lease is in the public interest prior to issuing an aquaculture state water bottom lease. At its March 24, 2022, meeting, the Commission's Marine Resources Committee (MRC) discussed an approach to developing potential criteria to consider when making a public interest determination. Based on MRC guidance, the Department of Fish and Wildlife (Department) subsequently developed an initial draft of potential criteria to consider when making this "public interest" determination, based on existing statutory, regulatory, and policy requirements to guide sustainable marine aquaculture development in California. Draft criteria will be presented for discussion with the MRC and public at the July 2022 MRC meeting.

Draft criteria outlined in this document are divided into two sections: 1) "Constraints", which are mandated requirements found in statute and/or regulations, and 2) "Considerations", which are factors that may be reasonably anticipated to consider during project development, permitting, and the California Environmental Quality Act (CEQA) process. Note that the public interest criteria are not intended to supplant or duplicate the type of analysis required for environmental review under CEQA, but rather to provide opportunity to flag significant concerns that either may prevent moving forward with the proposed project or may raise questions about alignment with the public interest, and/or help to highlight potentially significant environmental concerns that can be evaluated in depth through CEQA. It is important to view the Constraints and Considerations cumulatively, rather than solely as individual factors.

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**Constraints**

- Lease is not located in an area that is certified by the California State Lands Commission as unencumbered and available for aquaculture use (T14, CCR, Section 237(b)(3)).
- Lease area does not include areas used by the public for digging clams (FGC Section 15401).
- Lease is located outside of, and does not negatively impact, California's marine protected areas, marine managed areas, and special closures (T14, CCR, Section 632).
- Lease area is not located within, over, or adjacent to any area likely to adversely impact Native American cultural resources, as identified by the Native American Heritage Commission.
- Lease activities do not include culture of invasive species, as defined by U.S. Presidential Executive Order 13112 (Clinton 1999) as "an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health" or any known harmful local species that threaten the health of local habitats in unbalanced populations.
- Lease activities within Pacific Ocean waters do not include culture of any species of finfish belonging to the family Salmonidae, transgenic fish species, or any exotic species of finfish (FGC Section 15007).
- Lease activities do not jeopardize species with a threatened or endangered designation (FGC Section 2053(a)).
- Discharges from lease activities do not exceed total maximum daily loads of impaired waters (CWA sections 303(d) and 305(b)).

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- Lease activities are consistent with established best management practices within the particular industry and consistent with past coastal development permit conditions issued for similar leases.

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**Considerations**

- Lease would not unreasonably impede public access to state waters for purpose of commercial and/or recreational fishing, navigation, commerce, or coastal recreation (FGC Section 15411):
  - Lease area is located outside of important fishing grounds, including the California halibut trawl grounds (FGC Section 8495).
  - Lease area is located outside of high-use vessel routes, shipping lanes, and navigable channels for recreation and commercial uses.
  - Lease would not impede commercial or recreational boat navigation, traffic, and safety.
- Lease area would not interfere with closed, lease only, or leased administrative kelp beds (T14, CCR, Section 165.5).
- Lease is sited in areas that would minimize risks to public health as determined through consultation with California Department of Public Health (including within recognized mooring areas).
- Lease would not unreasonably interfere with, or negatively impact, the ability of the site and surrounding areas to support ecologically significant flora and fauna and avoids areas within sensitive habitats, including seagrass<sup>1</sup>, kelp, rocky reef habitat, and major marine mammal migration routes.
- Lease would not create unreasonable probability of whale and/or other marine mammal entanglement.
- Lease is sited to avoid impacts to special-status species of plants and animals, including without limitation marine mammals, finfish, and birds.
- Leases do not propose culture methods or materials known to cause environmental degradation, such as dredging, in-bottom culture, use of certain damaging mechanical harvesting devices, hydraulic pumps, antibiotics, anti-foulants, pesticides, or other chemicals, etc.
- To the maximum extent possible, the lease proposal includes definable plans to:
  - prevent introduction, transmission, and/or spread of invasive species, pathogens, disease, and pests;
  - minimize, clean up, and monitor marine debris, waste, water quality, and discharges;
  - maintain quarterly inspections, keep infrastructure in good repair, address any damaged or lost cultivation materials within specified timeframes, and report on gear and infrastructure conditions;
  - meet the minimum production and planting requirements per acre (T14, CCR, Section 237); and

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Commented [A2]: This might make more sense as a constraint.

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<sup>1</sup> Eelgrass is an important and protected aquatic plant species, having the designation of: "special aquatic sites" under Section 404(b)(1) Guidelines of the Clean Water Act and designated as "Essential Fish Habitat" under the Magnuson-Stevens Fishery Conservation Management Act. Further, the Pacific Fishery Management Council identified eelgrass as a "Habitat Areas of Particular Concern" (HAPC) for Pacific Coast groundfish and Pacific Coast salmon.

- benefit local and state economies through various means, such as diversification of the local economy, promotion of employment opportunities, contributions to the tax base, etc.

- Lease activities do not include culture of any species where it is determined it would be harmful to adjacent native wildlife (FGC Section 15102).
- Lease activities do not unreasonably interfere with educational activities and opportunities.
- Lease activities do not unreasonably interfere with tourism activities and opportunities.
- Lease activities do not inhibit, or interfere with, ecosystem services, blue carbon sequestration, or wetland migration, as sea level rises.
- Lease activities would contribute to overall resiliency of the surrounding ecosystems through restorative practices.
- Lease activities would benefit the surrounding community and economy by providing food security and economic opportunity and not contribute to inequitable and exclusionary culinary practices.
- Lease activities would not unfairly expose poor or marginalized communities to harms associated with the lease activities.
- Evidence can be provided to show that the lessee is a good actor and will uphold the grounds of their lease agreement.
- Consideration of prior leases are taken into account to encourage sustainable and equitable access to bottom leases and prevent financial burden and monopolies.

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