

20 Sept 2022

California Department of Fish and Wildlife
Second 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. The Commission’s public interest determination is made during a public hearing conducted in a fair and transparent manner and is the first decision in a multi-decision process. Once that public interest determination is made, Section [15404](#) directs the Commission to notify the public that the lease is being considered. This determination also has the effect of triggering environmental review under the California Environmental Quality Act (CEQA) and compliance with the State Tribal Communication and Consultation policy. In accordance with State and Commission procedures, the lease may be approved at a subsequent public hearing held at least 90 days after the initial public notification was published¹.

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. Initial draft criteria were presented for discussion with the MRC and public at the July 2022 MRC meeting. This second draft reflects revisions made based on public comments provided so far, and should inform continuing discussions, including a public workshop scheduled for September 30, 2022. These criteria apply ONLY to shellfish or seaweed aquaculture leases and do not apply to the culture of finfish within Pacific Ocean waters that are regulated by the state².

The criteria that the Department (in its project evaluation and recommendations) and the Commission (in its decision-making) should consider is broad, necessarily influenced by existing mandates and varies by project. Mandates such as CEQA, State Tribal Communication and Consultation Policy, and the public hearing process provide mechanisms for more in-depth considerations.

Deleted: The Commission’s decision to issue a lease should consider potential environmental, cultural, and socio-economic impacts and benefits. However, the degree of impact and/or benefit may, in many cases, only be ascertained after in-depth study, evaluation, and consultation.

Criteria listed below will help inform the public interest determination, project development, scoping of further analyses needed before a final leasing decision is made, and downstream agency permitting. The criteria are divided into two sections: 1) “Requirements”, which limit or

¹ CA Code of Regulations, Title 14, sec. [237\(b\)\(4\)](#).

² [FGC 15007](#).

constrain lease locations or activities by statute and/or regulations, and 2) a broader list of factors that may be reasonably anticipated for consideration (“Considerations”) during the planning, evaluation, and decision-making process. The public interest determination requires careful weighing of the Considerations relevant to each lease proposal. The determination represents the net effect of balancing all Considerations. Lease proposals will not be considered in the public interest where Requirements are not met and where in-depth study, evaluation and consultation would not likely resolve significant environmental, cultural, and socio-economic impacts.

Deleted: hus, one specific Consideration cannot by itself force a specific decision, but rather t

Requirements or Constraints

- 1 Lease is located in an area that is certified by the California State Lands Commission as unencumbered and available for aquaculture use³.
- 2 Lease area does not include areas used by the public for digging clams⁴.
- 3 Lease is not located within marine protected areas, marine managed areas, and special closures under state⁵, federal, or other jurisdictions⁶ that prohibit aquaculture, or sited in areas containing eelgrass.
- 4 Lease area is not located within, over, or adjacent to any area likely to adversely impact previously identified Native American cultural resources, as identified by the Native American Heritage Commission.
- 5 Lease activities do not include culture of any species at any location where it has been determined, [based on best available science], it would be detrimental to adjacent native wildlife⁷.
- 6 These criteria apply only to shellfish or seaweed aquaculture leases and do not apply to the culture of finfish within Pacific Ocean waters that are regulated by the state⁸. Marine finfish aquaculture is not permitted in state waters at this time.

Formatted: Font color: Auto

Formatted: Font: Not Bold, Complex Script Font: Not Bold

Formatted: Font: Not Bold, Complex Script Font: Not Bold

Formatted: Font: Not Bold, Complex Script Font: Not Bold

Formatted: Font: Not Bold, Complex Script Font: Not Bold

Formatted: Font: Not Bold, Complex Script Font: Not Bold

Formatted: Font color: Black

Formatted: French

Formatted: French

Formatted: French

Field Code Changed

³ T14, CCR, Section [237\(b\)\(3\)](#).

⁴ FGC Section [15401](#).

⁵ State MPAs described in CCR Title 14, sec. [632](#).

⁶ See applicable regulations for federal or other jurisdictions.

⁷ FGC Section [15102](#).

⁸ [FGC 15007](#).

Considerations

Potential impacts or concerns:

- 1 Lease area is compatible with administrative kelp bed designations⁹.
- 2 Lease is sited in areas that would minimize risks to public health as determined through consultation with California Department of Public Health (including within or adjacent to recognized mooring areas).
- 3 Lease does not propose use of culture methods, chemicals, or materials known to cause environmental degradation.
- 4 Lease does not propose use of feeds that may impact ecosystems or food security.
- 4 Lease would not unreasonably impede public access to state waters for purpose of commercial and/or recreational fishing, navigation, commerce, or coastal recreation¹⁰; this should include documented high-use vessel routes, shipping lanes, and navigation channels for recreational and commercial uses.
- 5 Lease would not unreasonably interfere with, or significantly impact, the ability of the site and surrounding areas to support ecologically significant flora and fauna and the ecosystem services they provide, including blue carbon sequestration and wetland migration as sea level rises.
- 6 Lease is sited to avoid areas within recognized sensitive habitats (including, but not limited to, eelgrass habitat) and avoid impacts to special-status species, including species with a threatened or endangered designation.
- 7 Lease is sited to avoid wildlife entanglements and includes measures to avoid entanglements.
- 8 The proposed lease will include measures to:
 - prevent introduction, transmission, and/or spread of invasive species, pathogens, disease, and pests;
 - prevent, minimize, clean up, and monitor marine debris;
 - maintain regular inspections of infrastructure and culture activities, keep infrastructure in good repair, address any damaged or lost cultivation materials within specified timeframes, and report on gear and infrastructure conditions;

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font: Not Bold, Complex Script Font: Not Bold

Formatted: Font color: Text 1

Formatted: French

Formatted: French

Formatted: French

Field Code Changed

Formatted: French

Formatted: French

Formatted: French

Field Code Changed

⁹ T14, CCR, Section [165.5](#).

¹⁰ FGC Section [15411](#).

20 Sept 2022

- meet the minimum production and planting requirements per acre¹¹.

Potential benefits:

- 1 Lease activities would contribute environmental benefits, such as habitat creation, nutrient uptake or filtration, species recovery, or other ecosystem services.
- 4 Lease activities would advance mitigation and/or adaptation strategies in response to climate change, including carbon sequestration.
- 5 Lease activities would help increase native fish stocks or enhance commercial and recreational fishing.
- 6 Consideration of prior leases are taken into account to encourage sustainable and equitable access to leases and to discourage monopolies.

Deleted: <#>Lease activities would benefit the state and surrounding community by providing employment and economic opportunity.[¶]
Lease activities would provide fresh, locally sourced product, benefiting local food security, and supplementing wild-harvested supplies.[¶]

¹¹ T14, CCR, Section [237](#).