

CALIFORNIA COASTAL COMMISSION

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BILL ANALYSIS
AB 303 (Robert Rivas)
As Amended 4/21/2021

SUMMARY

This bill would direct CDFW to designate five estuary or ocean tracts of 200 hectares (494 acres) each for the establishment of commercial and/or restoration mariculture projects, and develop regulations for a pilot program to test alternative shellfish and seaweed mariculture production and restoration strategies. Bottom leases for tracts within the pilot areas, and associated ground leases, would be issued within four months of application, by either the State Lands Commission (SLC) or the California Fish and Game Commission (FGC), as applicable. Once leases were issued, project applicants would be able to proceed without any further permits, with the exception of permits required by the State Water Resources Control Board. All subsequent authority over the facilities and operations would be governed by regulations developed by the Department of Fish and Wildlife (CDFW) in consultation with the Coastal Commission, Ocean Protection Council, SLC and the FGC.

The effect would be the elimination of the Coastal Commission's regulatory and enforcement authority over aquaculture projects in those areas.

RECOMMENDED MOTION

I move the Commission **Oppose** AB 303, and I recommend a **Yes** vote.

PURPOSE OF THE BILL

The author's reasons for this bill include the need to make the aquaculture permitting process easier and less for applicants, under the theory that current regulatory requirements have industry growth in California, and deregulation will fuel innovation. Additional reasons include facilitating ocean ecosystem species restoration, reduction of U.S. reliance on seafood imports; and sequestering carbon to reduce ocean acidification.

EXISTING LAW

Coastal Act Section 30100.2 cross-references the definition of "aquaculture" in Section 17 of the Fish and Game Code, and establishes aquaculture facilities shall be treated as agricultural facilities and land uses in all planning and permit-issuing decisions governed by the Coastal Act.

Coastal Act Section 30222.5 provides that any ocean-front property suitable for aquaculture shall be protected for that use, and any related facilities located on those sites shall be given priority.

Coastal Act Section 30411 (c) establishes aquaculture as a coastal-dependent priority use that shall be encouraged; requires the Coastal Commission and local governments

to provide for aquaculture sites in LCPs when identified by the Department of Fish and Wildlife for any uses that are consistent with the policies of the Coastal Act.

Coastal Act Section 30411(d) requires any state agency owning or managing coastal zone land to make it available to aquaculture to the extent possible consistent with other provisions of law.

Coastal Act Section 30612.5 required the Commission, by December 31, 2020, in consultation with CDFW and stakeholders, to develop guidance for applicants for coastal development permits for shellfish, seaweed, and other low-trophic mariculture production and restoration, to reduce time, cost and regulatory duplication associated with permitting. Guidelines available here:

https://documents.coastal.ca.gov/assets/cdp/CDP%20Application%20Guidance_12.08.20.pdf

Fish and Game Code Section 15400 (a) authorizes the Fish and Game Commission to issue state water bottom leases for commercial aquaculture projects.

Fish and Game Code Section 15400 (b) authorizes the Fish and Game Commission to issue state water bottom leases for open water fin fish aquaculture projects, subject to standards and regulations adopted by the Department.

Fish and Game Code Section 15400 (c) provides for the authorization of restoration or enhancement plans for monitoring and protecting benthic habitat, pollution prevention and protection of wild fish stocks.

Fish and Game Code Section 15008(a) requires CDFW to prepare programmatic EIRs for existing and potential commercial aquaculture operations in both coastal and inland areas, provided funds are made available.

Fish and Game Code Section 15008(b) requires a programmatic EIR for finfish aquaculture to meet additional standards, including CEQA review.

PROGRAM BACKGROUND

The Commission has permit jurisdiction for all types of development in state waters, including aquaculture facilities. Over the past decade, the Commission has processed between four to eight aquaculture applications per year.

Of the dozens of permits, permit amendments and permit waiver applications for aquaculture operations the Commission has reviewed since the mid-1970s, only one has ever been rejected. That was a major proposed expansion of Coast Seafood Company's operations in Arcata Bay, which, after the initial rejection, was modified to avoid areas of critical eelgrass habitat, and was subsequently approved by the Commission.

As part of the 2013 California Shellfish Initiative's effort to evaluate potential opportunities for improving regulatory efficiency, a statewide review of coastal

development permits for aquaculture operations was conducted. This revealed that nearly all-of the state's 18 commercial shellfish businesses were out of compliance with Coastal Act requirements, either because they were operating outside the scope of their permits, or they had failed to seek/obtain permits prior to commencing operations.

Rather than pursuing enforcement action, the Commission embarked on a multi-year compliance effort, reaching out to individual operators and offering assistance to bring their facilities into voluntary compliance. This highly-personalized, proactive approach resulted in the issuance of approximately two dozen separate Commission authorizations over a six year period, nearly all of which were approved unanimously through the Commission's consent calendar, without any cessation of business operations. Prior to this effort, none of the many marine aquaculture operations being conducted outside of Humboldt Bay had been subject to CEQA review and no modern environmental protection requirements were being consistently implemented. Achievement of 100% Coastal Act compliance is on track within the next 12 to 18 months. Although operators understandably may have preferred to operate without state oversight, their fully permitted, compliant operations now enjoy additional legal certainty, insurance benefits, funding eligibility, independent recognition of sustainability and environmental stewardship, etc.

In December, 2020, the Commission published the [CDP Application Guidance for Aquaculture and Marine Restoration](#). The guidance is intended to help applicants for marine aquaculture and restoration projects effectively navigate the CDP application process and provide partner agencies and other stakeholders with a better understanding of the Commission's CDP process as well as opportunities to coordinate with Commission staff. The guidelines were required by SB 262 (McGuire, 2019) which the Commission endorsed, and were widely supported by industry leaders and stakeholders who participated extensively in the drafting and review of the document.

Over the past year, the Commission has utilized the Guidelines to work with applicants on the successful approval of the first open-ocean kelp cultivation facility off of the west coast, and processed several permit amendments authorizing changes to existing operations. The Guidance has also been instrumental in providing extensive assistance to several companies with pending proposals and applications currently under review with planned hearing dates in early 2022.

In September 2020, the OPC approved funding to promote sustainable aquaculture through the development of a Statewide Aquaculture Plan that will create a consistent, science-based framework and policy for marine aquaculture in California that protects habitats and biodiversity while supporting the state's sustainable blue economy. Soon after, the OPC convened the Aquaculture Leadership Team (led by Secretary Crowfoot and comprised of programmatic staff of all state agencies involved in the regulation, permitting and development of aquaculture in California: the California Department of Fish and Wildlife, California Fish and Game Commission, California Coastal Commission, State Lands Commission, OPC, California Department of Food and Agriculture, California Department of Public Health and the State Water Resources Control Board) to co-develop a set of Aquaculture Principles to increase coordinated

and transparent decision-making for sustainable aquaculture, which will serve as the foundation for the Plan.

The “[Guiding Principles for Sustainable Marine Aquaculture Principles](#)” were publicly released in June, 2021, and the Plan is currently planned for completion by 2023. The Principles are centered on best available science, improved governance, effective planning and oversight, and protecting human health. Among other things, the Principles support taking “a precautionary approach to siting, operating, and managing aquaculture projects to ensure sustainability”; Developing “standardized, science-based approaches for siting, monitoring, and evaluating aquaculture operations”; “Establishment of an inter-agency working group to increase coordination and collaboration among state and federal agencies,” and ensuring “full compliance with all existing local, state, public trust, and federal requirements for siting and operating aquaculture facilities.”

The National Center for Ecological Analysis and Synthesis (NCEAS) at UC Santa Barbara and California Sea Grant, in close partnership with OPC staff, have also convened separate community and scientific listening groups which have each now met several times to help guide the development of the Action Plan.

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ANALYSIS

Protecting ocean health is a state priority, and one of the primary mandates of the Coastal Act. Marine ecosystems host a diversity of habitats, including kelp forests, seagrass beds, sandy bottom, coral reefs, and thousands of species of marine, plants, fish, mammals, invertebrates, seabirds and turtles. Coastal biodiversity has cultural significance to many of the state’s Tribal communities and supports commercial and recreational fisheries, ecotourism, and recreation, helping drive California’s coastal economy. State waters include more than 50 state marine protected areas, three National Estuary Programs, over a dozen Areas of Special Biological Significance, three National Marine Sanctuaries, and Channel Islands National Park. It’s paramount that aquaculture facilities in both state and federal waters evaluate, avoid, and minimize impacts to ecological, economic and cultural coastal resources in California.

When appropriately managed and sited, kelp and shellfish aquaculture operations can be sustainably run with minimal impacts to water quality, marine wildlife and habitat. But they also have the potential to negatively affect coastal resources by creating entanglement risk for whales and sea turtles; damaging or destroying habitat through placement of infrastructure; changing water quality and hydrodynamics, introducing chemicals (e.g. antibiotics, feed contaminants, nutrients, etc.), pathogens or invasive species; displacing productive fishing activities, and increasing marine debris and risk of

navigation hazards including those related to shipping, commercial and recreational fishing, and recreational boating. To avoid these and other potential impacts, aquaculture operations must be carefully sited, planned and managed consistent with rigorous and proven standards and best practices, and independently overseen.

The Coastal Act ensures that aquaculture projects are carried out in a manner that accounts for and protects sensitive natural resources, through the enforceable policies of Chapter 3. Like any other proposed development in state waters or on public tidelands, aquaculture projects must comply with Coastal Act resource protection policies through the coastal development permit process.

The Commission is the only state agency with authority over aquaculture activities carried out on private, federal, state and granted tidelands. As such, the Commission's regulatory program allows for implementation of a consistent approach to aquaculture management statewide. Without it, the state would be left with a patchwork of regulations, and different standards of review for similar projects based on arbitrary geographical location.

This bill would eliminate the Coastal Commission's long-standing regulatory authority and confer a Coastal Act exemption for both research and commercial aquaculture projects through a 15-year-long pilot program that would be carried out in five designated areas in state waters of at least 494 square acres each for a combined total of nearly 2,000 acres. For reference, the total acreage currently in use across the entire state is less than 500 acres. The total proposed new lease area would be equal to four times the total amount of acreage currently in commercial use.

This proposed new quasi-regulatory scheme raises the question of how sensitive coastal resources would be protected in practice, administratively. Although the bill requires the drafting of regulations to protect enumerated marine resources, there is no permit process by which to determine which regs apply to any given project. With no permit to enforce, enforcement will be cumbersome. If the regs are intended to be applied through lease terms, this will make the lease process exceedingly more complex. Leases don't typically include the level of specificity that permits do, and if the leasing entity is required to make leases function like permits, this puts SLC and FGC into an entirely new regulatory role, greatly increasing the volume and complexity of the leasing process. This raises the question of how a regulatory system that has struggled to provide consistent oversight over an industry in California at a fraction of the proposed scale will be able to handle the additional, 2,000-acre burden.

It also potentially creates an unfair business advantage over current operations adhering to existing permit conditions, as well as projects on granted tidelands which do not rely on either FGC or SLC leases, and will continue to adhere to higher standards of environmental protection including CEQA. Existing commercial operations and new operations located outside the five lease areas would presumably still be required to comply with the Coastal Act. But new operations within the lease areas would not, even if they were not actually experimenting with a new technique.

The bill also encourages the department to site the pilot plots in areas with existing aquaculture operations, which raises the question of whether the pilot plots may overlap with existing leased areas. If that were to happen, it could raise questions about the applicability of the bill to existing, permitted operations, and whether those permits could be obviated through the issuance of a new lease.

California doesn't need to create a pilot a program to test de-regulation of the aquaculture industry in state waters. We already know what that looks like. Prior to 2013, nearly all of California's aquaculture facilities were non-compliant. Without consistent oversight due to limited state resources, operations had expanded far beyond their lease areas, utilizing non-authorized species and equipment. This was causing damage to coastal and marine resources, contributing significant amounts of untraceable plastic marine debris, putting California native wildlife at risk, and creating conflicts with other uses of state waters, including in some cases dangerous navigational and public health risks. Over the course of a decade, the Coastal Commission has worked diligently and collaboratively with growers to bring their individual operations into compliance with the Coastal Act, without issuing fines or penalties, or closing any facilities¹.

For instance, some operations in Morro Bay, Tomales Bay and Carlsbad never underwent CEQA review or any other type of comprehensive environmental impact analysis prior to the coastal development permitting process. Prior to the Commission's permitting review, issues associated with marine debris, loss and damage to eelgrass habitat, vehicle use in intertidal mudflats, disposal of shell debris in intertidal mudflats, use of unauthorized cultivation methods and species and general lack of regulatory compliance were becoming increasingly problematic and generating public concern and vocal opposition. Through the Commission's CDP review process, best management practices, protective measures and regulatory oversight measures to protect coastal resources were implemented through approved permit conditions with minimal to no disruption to ongoing operations.

Perhaps the most spectacular example of unregulated underwater experimentation on an aquaculture lease occurred from 1988-1993 when the founder of the Marine Forests Society (MFS), Rudolphe Streichenberger, obtained a conditional lease from FGC and proceeded to construct a 10-acre thicket of old tires, PVC pipe, concrete blocks, nylon ropes, plastic mesh, Styrofoam and empty milk jugs on a subtidal parcel off the Balboa Peninsula. These "kelp bio-structures" and "mussel columns" were within close proximity to the Orange County sewage outfall. Nevertheless, the project was intended to demonstrate the viability of waste products to support cheap protein to "feed the

¹ In doing so, the Commission also created a clear pathway for future authorization of additional aquaculture development by providing consistent direction and a wide suite of examples of the types of operations, equipment, and locations it found consistent with the Coastal Act's resource protection policies and the types of resource protection measures and best management practices necessary to help ensure that consistency. These examples and pathway to successful permitting are provided and described in detail in the Commission's December 2020 CDP Application Guidance for Aquaculture and Marine Restoration.

world.” Not surprisingly, aside from the inherent problems associated with using discarded tires as the basis for an artificial reef, the project was not successful, and began to degrade and break apart almost immediately.

In October of 1994 the Department declared the lease abandoned, due to the operator’s failure to provide required reports, but the materials remained. Yet in March of 1995, the City of Newport Beach granted a Harbor Permit to the MFS to construct a different similar reef adjacent to the original project. Both projects were constructed with bottom leases, but no CDP.

Finally in 1999, the Coastal Commission initiated an enforcement action against MFS for unpermitted development. After a stretch of protracted litigation, the derelict materials, including over 30,000 use tires, were removed pursuant to the Commission’s enforcement order.

Admittedly, this is an extreme example, and unlikely to be repeated. But the larger point here is that between the MFS enforcement case and the Commission’s successful compliance efforts, the Coastal Act has been adding value from the perspective of both sustainable production and resource protection.

This bill would remove the Commission, the industry’s primary regulator, from any permitting or enforcement role over new operations. Environmental oversight would be the sole responsibility of CDFW, through regulations that may or may not include Coastal Act policies, but in any case would be enforced without the direct application of permit conditions, by a public agency that has never been tasked with Coastal Act implementation, analysis or legal review. This would be an obtuse, byzantine approach to regulation that would likely lead to greater confusion, inconsistent application of environmental policies and limited accountability.

Faulty Premise

Based on the bill’s findings, as well as previous testimony in the Water Parks and Wildlife Committee, the purported need for this bill is at least partially founded on a series of false premises, including that:

- California’s current regulatory regime is responsible for limiting future growth in the aquaculture industry.

No evidence has been provided in support of this premise. Aquaculture is a priority use under the Coastal Act, and the Commission has approved every application it has ever received. Currently, 5,700 acres of bottom land is already available for development under existing leases, yet only about 8% (491 acres) is under active cultivation, suggesting supply currently outpaces demand. Until recently, the FGC hadn’t received a single application for a new lease in over 30 years. All commercial expansion during that time has predominantly occurred in federal waters, on granted tidelands, onshore, or through amendments to existing leases which the FGC has processed and the Coastal Commission has approved.

Without doubt, the current system of considering and issuing new aquaculture leases

on state tidelands is in need of reconsideration. As demonstrated by the recent moratorium on new leases, FGC hasn't been provided with adequate resources to expeditiously evaluate and bring forward new lease applications for consideration. Removing the Commission's permitting authority will not only fail to address this issue, it will further impede FGC's efforts by increasing its workload while removing one of its key management partners.

- Mariculture and aquaculture can provide significant benefits to ocean health by improving water quality, reducing ocean acidification and increasing carbon sequestration. Therefore, permits should be eliminated for the sake of expediency.

Research into the carbon sequestration potential of aquaculture has shown some promising early results. But there are still substantial knowledge gaps, as well as conflicting data and interpretation. Further research and experimentation on ways to improve ocean health through low-tropic mariculture is warranted, and the Commission fully supports that goal as well as the restoration of native kelp, coral, and invertebrate populations. The recently approved, 16-acre, experimental project in federal waters should provide valuable new data to advance the goal of restoring kelp forests.

Although restoration/research applications are relatively rare, Commission is not aware of any dissatisfaction with the current lease/permit process for research projects. Because of SLC's CEQA review, which presumably will not change pursuant to this bill, the Coastal Commission typically issues CDPs for research and restoration projects in an average of four months. Removing the Coastal Commission's authority, and instead requiring the SLC to play the role of regulator as well as land lord, is unlikely to result in time savings and may even delay the currently efficient process.

Through its regulatory review process, the Coastal Commission has pioneered new methods to identify and track aquaculture-related marine debris to its place of origin, allowing the agency to design mitigation measures to minimize losses. The Commission has also required additional safeguards for marine mammals, and prevented the introduction of potentially invasive species.

- The US imports 90% of its seafood. Reducing permitting costs and streamlining the regulatory process will promote sustainable local seafood production that will reduce reliance on imports from countries with lower environmental standards.

This statement conflates shellfish grown in California (primarily oysters and mussels) with all other types of seafood, obscuring the fact that the U.S. is also the 4th largest *exporter* of seafood as well, and the largest producer of seafood among developed countries. Domestic seafood imports are driven largely by our affinity for farmed shrimp, farmed salmon and canned tuna, not shellfish. In fact, Americans consume less than one pound per year, per capita, of the seafood produced through aquaculture in California. Unless it is combined with a radical and unprecedented change in consumer

behavior and eating preferences, it is difficult to see how cultivation of more oysters and mussels in California will lead to a reduction in seafood imports.

<http://www.fao.org/in-action/globefish/countries/countries/usa/usa-trade/en/>
<https://www.fas.usda.gov/data/us-fish-and-seafood-exports-reach-record-levels>

In addition, the 90% figure implies that only 10% of the seafood consumed in the US comes from US waters. In fact, due to complex global supply chains, low tariffs and labor costs, it's not uncommon for seafood caught in the US to be exported for processing and then reimported for consumption. According to the National Academy of Sciences, it is likely that as much of 38% of the seafood consumed in the US is domestic in origin.

<https://www.pnas.org/content/116/19/9142>

So while it's true that a majority of the seafood Americans eat is foreign-sourced, it's also true that a third of what we catch and produce in the US is sold to foreign countries, because seafood, like oil and beef, is a global commodity. Essentially, the U.S. is exporting our high-value, mostly wild-caught seafood to other countries, and importing lower-value, mostly farmed species such as shrimp and salmon which cannot be grown in California ocean waters.

[Opinion | Why Are We Importing Our Own Fish? - The New York Times \(nytimes.com\)](https://www.nytimes.com/2018/05/14/opinion/why-are-we-importing-our-own-fish.html)

As we have learned with virtually every other global agricultural commodity, deregulation will not end or significantly diminish seafood imports and exports. Shellfish, the only type of seafood currently farmed in California waters, are essentially a luxury food item, and make up a miniscule percentage of this trade. Of the top ten marine species consumed in the U.S. the only shellfish species is clams, at #10, with less than one third of a pound per person consumed per year.

<https://progressivegrocer.com/10-most-popular-fish-make-90-volume>

Singled Out

The bill purports to streamline aquaculture permitting by centralizing oversight authority with CDFW. The fact sheet states:

“Nearly a dozen agencies – including the Department of Fish & Wildlife, Coastal Commission, State Lands Commission, Fish & Game Commission, State Water Resources Control Board, United States Army Corps of Engineers, and many more – need to sign off on every aspect of a proposed project, a process that can take years or even decades”

Yet, the Coastal Commission is the only agency appearing on that list that is being targeted for elimination. The Fish and Game Commission and State Lands Commission will still issue leases, the SWRCB will still require discharge permits, CDFW will still oversee compliance with lease terms and regulations, and the U.S. Army Corps of

Engineers will not be affected, although the state will explore options for state verification. It appears that the Coastal Commission is the only entity whose authority is being eliminated, which will be offset by increased responsibilities on CDFW.

All of California's regulatory agencies have institutional expertise and unique statutory authority to protect public health the public trust resources. Eliminating interagency participation in the regulatory review process and concentrating all responsibility on one department is inappropriate, ill-advised, and would place CDFW in an awkward position of attempting to enforce Coastal Act policies, through regulations based on a statute which they don't otherwise implement. This is analogous to eliminating streambed alteration permits, in favor of designating the Coastal Commission as the sole regulator of in-stream flows and riparian habitat through regulations.

Non-Native Invasives

The bill limits pilot restoration projects to native species of shellfish and seaweed, but allows for the commercial production of non-native species, including Pacific oysters and Manila clams. Neither is native to California waters, and both have proven to be invasive in portions of California and many parts of the world. The Commission has prohibited cultivation of reproductively viable adult Manila clams in Humboldt Bay due to documented evidence that they can form large self-sustaining populations that persist in the wild. Pacific oysters are even more problematic. From the Commission's Guidance Document:

"Pacific oysters are the most commonly cultivated shellfish species in California and have been the focus of increasing scrutiny in recent years by the Commission and other natural resource agencies, including NOAA's Office of National Marine Sanctuaries. In many other parts of the world where Pacific oysters are also non-native (Australia, South Africa, parts of South America and Europe) they have escaped cultivation and been able to persist in the wild. As noted by CDFW in its California Non-native Estuarine and Marine Organisms (Cal-NEMO) database:

A repeated pattern in different regions has been for [Pacific oysters] to go from being largely confined to culture areas, with only sporadic and limited reproduction, to becoming a major biomass component and ecosystem engineer. This process, which has taken 3-10 decades, has occurred in British Columbia and Washington State (Quayle 1969; Klinger et al. 2006; Kelly et al. 2008; Padilla 2010), the North Sea in Europe (Diederich 2005; Beukema and Dekker 2011), the Atlantic coast of Patagonia (Escapa 2004), Hawaii (Carlton and Eldredge 2009), and Australia (Krassoi et al. 2008). The transition from cultured hatchery-dependent populations, to feral self-sustaining populations complicates the assignment of dates of invasion.

The discussion on Cal-NEMO also addresses the types of economic and ecological impacts seen around the world from the establishment of Pacific oysters in the wild and how this establishment can pose risks to native shellfish populations and habitats. The document describes the Pacific oyster as "a highly successful invader, and a powerful ecosystem engineer, creating complex reefs, replacing native shellfish, and altering

estuarine food webs through suspension-feeding (Herbert et al. 2016).” Other research indicates that the Pacific oyster is identified as an invasive species in 17 of the 66 countries where it has been cultured.

For many years, the dominant thinking in California was that Pacific oysters were not capable of successfully spawning and settling here (likely due to the lack of necessary water temperatures). However, surveys and research published in 2012 and 2015 identified persistent populations of Pacific oysters outside of cultivation on Catalina Island and from Los Angeles Harbor south to the Tijuana River Estuary. Observations of Pacific oysters growing outside of cultivation have also been made in Tomales Bay, and a focused eradication effort for Pacific oysters was carried out in San Francisco Bay in the mid-2000s. Research indicates that, prior to the past several years, this conspicuous species of shellfish had never before been recorded in the wild in such abundance in these locations, providing strong evidence that it is capable of successfully recruiting when reproductively viable populations are present and appropriate environmental conditions appear...

Pacific oysters are currently included on CDFW’s list of species approved for aquaculture. Given recent research and observations that demonstrate the species’ ability to escape from cultivation, the Commission staff believes it is time to re-examine the CDFW-approved species list through a scientific evaluation that includes input, recommendations and guidance from aquatic invasive species experts. Such an evaluation should include Pacific oysters as well as other commonly cultivated non-native species such as Manila clams and Mediterranean mussels and could be addressed by the Ocean Protection Council as part of its efforts to develop a California Aquaculture Plan. A new evaluation could also expedite the environmental review process by providing the agencies with state-of-the-art information and analysis needed to support their recommendations and decisions, including about the observed and potential impacts of Pacific oyster and other non-native shellfish aquaculture species colonization in California.” (Pp 33-35)

The foregoing discussion regarding the cultivation of invasive non-native species, codifying the list of approved species in advance of the state plan is premature and potentially ill-advised.

CEQA Drift

A thorough and robust CEQA process provides the informational foundation necessary for the Commission’s permitting process to proceed smoothly. All existing leases were issued before either before CEQA was enacted in 1970, or before the law was understood to apply to aquaculture leases. With no CEQA document to rely on, as has been the case for several existing commercial lease renewals, expansions and amendments, the Commission’s CDP process must necessarily require the applicant to provide the relevant information that should have been analyzed at the initial leasing phase. This has created the impression that the Coastal Commission is requiring onerous, duplicative environmental data and alternatives analysis, when in fact it is

seeking information necessary to adequately determine, and avoid or mitigate, impacts associated with the proposed project.

In contrast, bottom leases issued by the State Lands Commission for research-related aquaculture projects and all other bottom leases for state tidelands are issued pursuant with an appropriate environmental document (EIR, MND or ND). As a result, the Commission is able to act on these CDP applications in an average of four months.

If this bill becomes law, the prospects for CEQA compliance are unclear. The State Lands Commission is likely to continue to conduct CEQA at the leasing stage. The FGC intends to conduct CEQA review for all new leases and lease expansions, but does not yet have the ability to contract for these services. But the requirement to issue the lease within four months, combined with the new obligation to assume the regulatory responsibilities of the Coastal Commission, creates an unrealistic and unachievable timeframe for final action for both SLC and FGC.

In 2020, the FGC chose to adopt temporary moratorium on new commercial leases, for a variety of reasons, including resource constraints. Similarly, CDFW has staff capacity and other issues which have for years been barriers to their efforts to complete a programmatic EIR as required by SB 201 (Simitian, 2006). Instead, FGC (and the RWQCBs) rely on the Coastal Commission's subsequent CEQA-equivalent CDP process. The FGC has been able to forego lead agency responsibilities under CEQA in some cases because the Coastal Commission's certified regulatory program takes care of that obligation.

While this is not the Commission's preferred scenario, and is largely the reason the agency gets labeled as "obstructing" the development of new aquaculture projects, the Commission's CDP process does ensure that environmental impacts are fully analyzed, alternatives are considered, and enforceable standards and monitoring requirements are built into every approved aquaculture project.

Without Coastal Act review, CEQA obligations will fall squarely back on FGC, and presumably CDFW. Four months is not nearly enough time for a lead agency to conduct the environmental review necessary for the issuance of a bottom lease, particularly if the leases would have to regulate the development itself, address all of the issues identified in the new regulations, and contain all requirements previously addressed through CDPs. Leases do not typically contain specific project requirements and mitigation measures. This would create a new, and significant, additional workload for both the Fish and Game Commission and the State Lands Commission. Conferring significant additional responsibilities on the Fish and Game Commission, through a cumbersome requirement to address, mitigate or avoid all potential environmental impacts at the leasing stage while severely truncating the timeline in which to do so, at a time when the FGC has struggled to meet its current lease-related workload demands, is a proposal that is deeply disconnected from reality.

Acknowledging the staffing and resource challenges of other agencies in this space, the Commission's involvement has actually helped facilitate an interagency partnership

approach to oversight and compliance that has allowed all agencies to share the workload. While it's become clear that no single agency has fully adequate staffing resources to provide the assistance and oversight that both the industry and public expect, we've been able to show this can be accomplished through partnership and coordination amongst the various state federal agencies.

Stronger Together

Commission staff have a long history of interagency coordination to increase communication and efficiency, as evidenced most recently by the publication of the [CDP Application Guidance for Aquaculture and Marine Restoration](#) and the [Guiding Principles for Sustainable Marine Aquaculture Principles](#).

The Commission is an active participant in the interagency Aquaculture Leadership Team, which is overseeing the development of the Statewide Aquaculture Action Plan. When complete, this plan will be another foundational policy tool for guiding the state's approach to 21st Century Aquaculture.

Which suggests that the state's current effort to support expanded aquaculture activity without sacrificing rigorous environmental protection standards is already well underway and may better meet the perceived need for this measure.

CONCLUSION

This bill is based on a false premise: namely that the requirements of the Coastal Act are responsible for hindering industry growth in California, and therefore, regulatory relief from the Coastal Act is necessary in order to promote expansion of the aquaculture industry and encourage marine restoration projects. But the Coastal Commission's track record with gaining shellfish industry compliance, as well as producing and publishing the widely supported Aquaculture Guidelines for Applicants demonstrates that aquaculture projects can operate successfully while also adhering to Coastal Act resource protection standards. While it's no surprise that any regulated industry would prefer less oversight, the justification for eliminating the Commission's jurisdiction in state waters, the most critically sensitive habitat in the coastal zone, is not supported by the facts. Nor has the need to reduce processing times for non-commercial research projects been demonstrated.

In fact, the state's most obvious challenge to approving new aquaculture facilities is the FGC's challenge with evaluating and considering applications for new leases, which stems from a lack of staff resources and limited authority to seek reimbursement for CEQA-related expenses from applicants. This has been demonstrated by the recent moratorium on new lease applications and the many years FGC has taken to carry out an initial review for the three lease applications it has received.

A more effective approach to streamlining the permitting process would be to provide the necessary resources and authority to the Fish and Game Commission to process new applications and conduct CEQA review on commercial bottom leases, or to shift all

leasing responsibility to the State Lands Commission which has considerable, existing capabilities regarding CEQA-compliance.

SUPPORT

Aquarium of the Pacific, California Aquaculture Assn, Climate Center, Green Wave, Hog Island Oyster Co., The Nature Conservancy, Pacific Coast Shellfish Growers Assn., Port of Los Angeles, Port of San Diego, Ventura Port District.

OPPOSITON

California Coastal Protection Network; Center for Biological Diversity, Coastwalk California; Environmental Action Committee of West Marin, Environmental Defense Center; Friends of the Earth, Heal the Bay, Northwest Atlantic Marine Alliance, Sierra Club California.

RECOMMENDED POSITION

Staff recommends the Commission **Oppose** AB 303.