

STAFF SUMMARY FOR JUNE 21-22, 2017

36. MARINE NON-REGULATORY REQUESTS**Today's Item**Information Action

This is a standing agenda item for FGC to act on non-regulatory requests from the public that are marine in nature. For this meeting:

- (A) Action on non-regulatory requests received at the Apr 2017 meeting.
- (B) Update on pending non-regulatory requests referred to staff or DFW for review.

Summary of Previous/Future Actions

(A)

- FGC receipt of requests Apr 26-27, 2017; Van Nuys
- **Today's action on requests Jun 21-22, 2017; Smith River**

(B)

- **Today's update and possible action on referrals Jun 21-22, 2017; Smith River**

Background

FGC provides direction regarding requests from the public received by mail and email and during public forum at the previous FGC meeting. Public requests for non-regulatory action follow a two-meeting cycle to ensure proper review and consideration.

- (A) **Non-regulatory requests.** Non-regulatory requests scheduled for consideration today were received at the Apr 2017 meeting in one of three ways: (1) submitted by the comment deadline and published as tables in the meeting binder, (2) submitted by the late comment deadline and delivered at the meeting, or (3) received during public forum.

Three non-regulatory requests received in Apr 2017 are scheduled for action. Exhibit A1 summarizes the requests and contains staff recommendations for each request (for individual requests see exhibits A2-A4).

- (B) **Pending non-regulatory requests.** This item is an opportunity for staff to provide a recommendation on non-regulatory requests that were scheduled for action at a previous meeting and referred by FGC to DFW or FGC staff for further review. FGC may act on any staff recommendations made today.

One request referred to staff for review is ready for action:

Request for FGC resolution supporting prohibition of oil and gas exploration off California. In Feb 2017, FGC granted a request from Heal the Bay and Environment California to adopt a resolution supporting the federal prohibition on new offshore oil and gas leasing in federal waters offshore California. Based on FGC request, a draft resolution was submitted by the petitioners at the Apr 2017 FGC meeting. FGC directed staff to review the draft resolution and propose a revised draft resolution for action at the Jun 2017 FGC meeting. A staff-revised draft resolution is provided for consideration today (Exhibit B1).

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Significant Public Comments (N/A)**Recommendation**

- (A) Adopt staff recommendations for non-regulatory requests to (1) deny; (2) grant; or (3) refer to committee, DFW staff, or FGC staff for further evaluation or information-gathering. Staff recommendations for each non-regulatory request are provided in Exhibit A1.
- (B) Adopt staff-revised draft resolution opposing new oil and gas leasing in federal waters offshore California (Exhibit B1).

Exhibits

- A1. [FGC table of marine non-regulatory requests received through Apr 27, 2017](#)
- A2. [Email from Cynthia Harland, received Feb 26, 2017](#)
- A3. [Email from Mike Wright, received Mar 23, 2017](#)
- A4. [Email from Audubon California, received Apr 13, 2017](#)
- B1. [Staff-revised draft resolution, dated Jun 13, 2017](#)

Motion/Direction

- (A) Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on April 2017 non-regulatory requests.

OR

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on April 2017 non-regulatory requests, except for item(s) _____ for which the action is _____.

AND

- (B) Moved by _____ and seconded by _____ that the Commission adopts the resolution supporting the prohibition on new oil and gas leasing in federal waters offshore California as recommended by staff.

OR

Moved by _____ and seconded by _____ that the Commission adopts the the resolution supporting prohibition on new oil and gas leasing in federal waters offshore California as recommended by staff with the following modifications:

_____:

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR MARINE NON-REGULATORY REQUESTS RECEIVED THROUGH APRIL 27, 2017
 Revised 06-09-2017

FGC - California Fish and Game Commission DFW - California Department of Fish and Wildlife WRC - Wildlife Resources Committee MRC - Marine Resources Committee

Date Received	Name of Petitioner	Subject of Request	Short Description	Staff Recommendation	FGC Decision
2/26/2017	Cynthia Harland	Aquaculture leases	(1) Urges FGC not to approve any new aquaculture leases in Tomales Bay until "legacy trash and debris" from oyster farming are cleaned up. (2) Requests that DFW and FGC clean up marine debris in Tomales Bay.	(1) DENY; staff is currently evaluating options to address the "legacy debris" issue; (2) DENY; this request goes beyond debris associated with aquaculture leases and is outside FGC authority, and staff is developing best management practices to address aquaculture lease debris	RECEIPT: 4/26-27/2017 ACTION: Scheduled 6/21-22/2017
3/23/2017	Mike Wright	Aquaculture leases	Opposes possible FGC approval of new aquaculture lease application for Tomales Bay received in Feb 2017.	DENY; the formal review process necessary to inform such a decision needs to be completed before the request can be considered	RECEIPT: 4/26-27/2017 ACTION: Scheduled 6/21-22/2017
4/13/2017	Mike Lynes and Anna Weinstein Audubon California	Aquaculture leases, Marine spatial planning	Urges FGC to: (1) require a spatial planning process for Tomales Bay before evaluating or approving new or expanded aquaculture; (2) not issue any new or expanded aquaculture leases unless and until a maximum, permanent footprint and location for aquaculture is identified and adopted by FGC; (3) adopt a motion to request staff to work with partner agencies to initiate a marine spatial planning exercise and identify siting alternatives; (4) direct staff to reach out to OST, OPC, or other candidates to undertake marine spatial planning; and (5) requests that FGC add a discussion on topic to 2017 MRC meeting agenda.	(1) DENY; Fish and Game Code Section 15008 provides a mechanism for a framework to consider existing and potential commercial aquaculture operations in coastal areas through a programmatic environmental impact report, if money is available; the money is not currently available; (2) DENY; a permanent, maximum footprint and location would be inconsistent with potential adaptive management needs, including changing ocean conditions, and onsideration of siting for new lease area applications can be accomplished through mandatory environmental review purusant to California Environmental Quality Act, which considers cumulative impacts; (3) – (4) DENY; request infeasible at this time given other staff obligations.; (5) GRANT; add as topic to the aquaculture discussion scheduled for the July 2017 MRC meeting	RECEIPT: 4/26-27/2017 ACTION: Scheduled 6/21-22/2017

From: [Cynthia Harland](#)
To: [FGC](#)
Subject: New oyster leases on Tomales Bay
Date: Sunday, February 26, 2017 12:07:19 PM

Dear Ms. Termini,

We live in Marshall, CA on Tomales Bay. We would like to register our opposition to any new oyster farming leases until the Oyster Farming Legacy trash and debris is cleaned up. It's a disgrace that the beauty of this unique natural gift is significantly degraded by the past and current practices of oyster, clam, and mussel cultivation. Over 140 years of aquaculture have left a disturbing, disgraceful legacy in Tomales Bay.

It makes sense that before any new leases are approved, the California Fish & Game Commission and the California Department of Fish & Wildlife should clean up the tons of debris littering the Bay.

Sincerely,
Cynthia & John Harland

From: [Mike Wright](#)
To: diane.Windham@noaa.gov; Lovell.Randy@Wildlife; [FGC](#)
Subject: Fwd: New shellfish lease application on Tomales Bay
Date: Thursday, March 23, 2017 10:34:43 PM

Hi,

My name is Michael Wright and I am emailing you with concerns about the proposed shellfish lease on the north end of Tomales Bay.

First, I would like to talk about the current leases on the bay. While I do enjoy some of the oysters grown by Hog island oyster co, I don't like them enough to let more of the bay be turned into leases for private individuals to profit from. This water / land is protected for ALL people by the public trust doctrine. It is also protected for animals too. Not just one person or family should be able to profit from the lands bounty at the expense of the rest of the public.

1st main concern

My wife and I are avid paddlers. Tomales Bay is an amazing place for kayaking and general boat enjoyment. That is, until you paddle around the areas where the oyster farms are. The areas where the oyster farms are located are also some of the safest and best weather and tide protected areas for boaters to explore. The mess left behind from abandoned and current operations are not pleasant and very destructive. There is trash everywhere. But with that said, I can somewhat over look this because on the north side of Toms point all the way to Dillon beach, there are beautiful, natural beaches clear of any shellfish operations for the public's enjoyment. Well this is exactly the area where the new lease is being proposed. Please.....don't allow one individuals money making operation, spoil this part of the bay for the rest of us. If you have ever boated the shoreline where the current leases are, you will find difficult, dangerous and unpleasant conditions.

Next thought....the fish and wildlife.

Tomales Bay is a delicate ecosystem. What makes Tomales bay very cool and appealing to wildlife is the eel grass beds. Many animals rely on these to survive. As a matter of fact, the Tomales bay eel-grass beds are so delicate, much of the northern part of the bay is a no anchor zone for boats. This is to protect the remaining eel grass in the bay. If you look at where the new lease is proposed, these are some of the last few eel grass beds left in the bay. Allow this lease and the eel grass is gone. If the public is not allowed to anchor their boats, how does it make sense to let someone do as they please with the sea floor. Just take a trip to the bay and see what the floor of the bay is like around the oyster leases. Its barren, polluted and is altered from its natural state. Not to mention that the gentleman wants to grow geoduck clams on the lease. This is even more destructive than the oyster farming. That totally destroys the area where geoduck farming takes place.

Last very important reason that ties into the last point,

Pacific Black Brant.....Tomales bay plays host to thousands of brant every year. I love watching and hunting these birds. The reason they come to Tomales bay????? Eel Grass!!!!!!! There are only a few places left in California where enough eel grass grows for the Brant to feed on. Tomales bay is one of them. Few Brant hang out in the area south of toms point where the current oyster leases are. Thousands hang

out to the north of toms point. Put new oyster leases there and kill the remaining eel grass? The brant disappear.

Final thought, more people would be harmed by the new lease than there are people who would benefit from it.

Who benefits from the lease...the owner and the family.

Who benefits from not allowing it....

Boaters, hunters, bird watchers, campers, fisherman, nature lovers, outdoor enthusiast, photographers, plants, and animals.

Please submit my objection to the new lease to whom it my concern.

I would like to be notified when upcoming Fish & Game Commission meetings will occur so that you could attend or at least submit this letter. Can any of you give me a heads up when the meetings will happen?

Thanks,
Michael Wright



Audubon CALIFORNIA

April 13, 2017

Re: Lease application for shellfish aquaculture in Tomales Bay

Mr. Craig Shuman
Director, Marine Region, California Department of Fish and Wildlife

Ms. Valerie Termini
Executive Director, California Fish and Game Commission

Ms. Susan Ashcraft,
Marine Advisor, California Fish and Game Commission

Dear Mr. Shuman, Ms. Ashcraft and Ms. Termini,

We write in regard to a new application for an approximately 45-acre lease for oyster and geoduck farming in Tomales Bay included in the California Fish & Game Commission's consent calendar for its February 2017 meeting.¹ We appreciate the thoughtful manner in which the Commission has addressed aquaculture permits in the past and urge the Commission to require a deliberate, fact-based planning process be implemented for Tomales Bay before any new or expanded aquaculture programs are permitted.

Tomales Bay's intertidal and subtidal areas have extraordinary resource values for birds, commercial fish and herring. In sum, the bay is too important for an ad hoc approach to aquaculture permitting that may undermine the Commission's public trust obligations for protection of natural resources, special status species, and recreation. Therefore, we oppose the Commission approving any new aquaculture lease in Tomales Bay unless and until a maximum, permanent footprint and location for aquaculture is identified and adopted by the Commission. Toward that end, we constructively suggest that at its April meeting the Commission take the following steps:

- Adopt a motion to request staff to work with partner agencies to initiate a marine spatial planning exercise to identify a set of aquaculture siting alternatives for the Commission to consider at a later meeting;
- Note that applications for new or expanded aquaculture will be evaluated following the completion of that spatial planning exercise;
- Task staff with immediately reaching out to entities that would be good candidates for the marine spatial planning exercise, e.g. the Ocean Science Trust and/or Ocean Protection Council; and

¹ http://www.fgc.ca.gov/meetings/2017/Feb/exhibits/SS_0209_Item_27_SAShellfish.pdf

- Include a discussion of this issue at the 2017 meeting of the Marine Resources Committee with the goal of providing recommendations for the full Commission.

We appreciate the Commission and Department's work to ensure existing aquaculture leases avoid farming within 10 feet of eelgrass – protecting this vital and rare habitat - and your work conducted in collaboration with local stakeholders to remediate issues associated with abandoned debris.

However, in regard specifically to birds, known impacts of these farming operations to birds in the bay include avoidance of farmed areas by most shorebirds², and disturbance to waterbirds and Pacific black brant³, a California Species of Special Concern, from vessel traffic associated with farm operations. Any new lease application must consider impacts to birds from disturbance and habitat loss or degradation.

Tomales Bay's importance was recognized in 2002 by the **International Ramsar Convention**, which designated the site as a "Wetland of International Significance." There are only 37 Ramsar sites in the United States.⁴ Tomales Bay is a **Global Important Bird Area** and of all the Pt. Reyes wetlands, it consistently supports the highest numbers of wintering and migrant waterbirds. Up to 20,000 shorebirds spend the winter, and an unknown additional number use the bay during migration in the spring and fall. Surveys have documented exceptionally large numbers of bufflehead and brant, which represent 12% and 31%, respectively, of statewide wintering populations.⁵

Remaining intertidal wetlands such as those in Tomales Bay are critical for birds. Over 90% of California's historical two million hectares of wetlands has been lost. Stralberg et al. (2011)⁶ found in California "estuarine habitats including eelgrass, tidal flats and tidal marsh are the most limited in spatial extent, yet support the highest densities of shorebirds and waterbirds." The study's lead author recently confirmed that these habitats can be considered the highest priority for protection from further loss of even small acreages from habitat degradation and conversion, and disturbance.

Black brant are showing signs of stress at the population level^{7,8}, and dramatic decreases in eelgrass areal extent in important brant migratory areas including Morro Bay and San Quintin Bay highlight the importance of evaluating the cumulative impacts to this species from any new farm development.^{9,10,11} Brant and other waterbirds using Tomales Bay, such as canvasback, teal, and northern pintail, are important recreational species for California's recreational hunting community.

² Kelley, J., J. Evens, R. Stallcup, and D. Wimpfheiner. 1996. Effects of aquaculture on habitat use by wintering shorebirds in Tomales Bay, California. *California Fish and Game* 82(4): 160-174.

³ Kelley, J. and J. Evens. 2013. Boating Disturbance to Waterbirds in California Estuaries. ACR Technical Report 89-12-6

⁴ <https://www.fws.gov/international/wildlife-without-borders/ramsar-wetlands-convention.html>

⁵ Important Bird Areas in California. National Audubon Society. <http://netapp.audubon.org/iba/Reports/161>

⁶ Stralberg, R. Cameron, M. Reynolds, C. Hickey, K. Klausmeyer, S. Busby, L. Stenzel, D. Shuford, G. Page. 2011. Identifying habitat conservation priorities and gaps for migratory shorebirds and waterfowl in California. *Biodiversity Conservation* 20: 19-40

⁷ Summary Opinion and Recommendations for Pacific Flyway Brant Management. 13 December 2016. Aaron Christ, Biometrician, USFWS Maritime National Wildlife Refuge, Alaska Region ; Josh Dooley, Wildlife Biologist, USFWS Migratory Bird Management, Headquarters Region ; David Koons, Associate Professor, Department of Wildland Resources, Utah State University; Jim Leafloor, Biologist, Canadian Wildlife Service, Environment Canada

⁸ Leach, A. et al. 2017. Survival and recovery rates of Black Brant from arctic and subarctic breeding areas. *The Journal of Wildlife Management*. In review.

⁹ Merkel & Associates. 2014. San Francisco Bay Eelgrass Inventory. Report for the National Marine Fisheries Service. Santa Rosa

¹⁰ Simancas, J.E. 2013. Assessment of the quality eelgrass habitat for black brant, *Branta bernicla nigricans*, during the non-breeding season of San Quintin, Baja California, Mexico. Master's Thesis. CICESE, Ensenada, Baja California

¹¹ Pacific Watershed Associates. 2015. Preliminary Eelgrass (*Zostera marina*) Mapping and Habitat Characterization, North Humboldt Bay, California. For: Humboldt Bay Harbor, Recreation, and Conservation District Mariculture Pre-Permitting Project, Eureka, California. Pg. 14.

In regard to shorebirds, intertidal mudflats are critical for shorebirds on the Pacific Flyway, and the new lease application overlaps with a key foraging areas in the bay. Kelly (2001) studied shorebirds during the winter only (excluding spring and fall migration, for which there are no readily available published studies) and found that the “northeast shoreline from Sand Point north to Vincent’s Landing also supported relatively high abundances of several species.” Kelly (2001) also notes that “foraging and roosting shorebirds at the northern end of the bay are vulnerable to direct disturbance from concentrated recreational use.” This site-specific information speaks to the importance of a spatial planning process to avoid further degrading or making unavailable feeding and resting habitat to shorebirds.

Key threats to shorebirds include disturbance and habitat loss in wintering and migration areas on the Pacific Flyway. The **2017 Pacific Americas Shorebird Conservation Strategy**¹², a collaboration among numerous binational agencies, academic institutions, and NGOs, notes “the habitats used by shorebirds have been altered dramatically in the last century across the Western Hemisphere and indeed around the world (Hassan *et al.* 2005). Human disturbance is recognized as a key threat in shorebird conservation and recovery plans, as well as in many published studies (see Brown *et al.* 2001; NFWF 2015), and received a high overall threat rating in this Strategy. Human disturbance does not typically destroy habitat but causes disruption to breeding and nonbreeding shorebirds. This, in turn, can have consequences on reproductive success and survivorship (Gill 2007). Shorebirds can exhibit the inability to gain weight and build fat reserves required for long-distance migration because of exclusion, interrupted access or changes in timing of access to food resources or roosting locations (Lafferty 2001).”

The Plan further notes that “even small losses in the extent or quality of available feeding habitat for shorebirds could result in proportionally greater decreases in some wintering shorebird populations,” and identifies the high priority to “protect, maintain, restore and enhance breeding habitats for species of highest conservation concern and at sites of high nonbreeding shorebird concentrations.”

We thank you for your consideration of this issue, and we look forward to Commission, Department and partner agency action toward ensuring protection of birds and other natural resource protection in Tomales Bay.

Sincerely,



Mike Lynes
Director of Public Policy



Anna Weinstein
Marine Program Director

¹² Senner, S. E., B. A. Andres and H. R. Gates (Eds.). 2016. Pacific Americas shorebird conservation strategy. National Audubon Society, New York, New York, USA. Available at: <http://www.shorebirdplan.org>.

CALIFORNIA FISH AND GAME COMMISSION

DRAFT Resolution Supporting the Federal Prohibition on New Offshore Oil and Gas Leasing in Federal Waters Offshore California

Revised June 13, 2017

WHEREAS, the mission of the California Fish and Game Commission is, on behalf of California citizens, to ensure the long-term sustainability of California's fish and wildlife resources; and

WHEREAS, the California coast and its waters is home to an abundance of diverse fish and wildlife, including numerous rare, threatened and endangered species, as well as sensitive habitats upon which they depend; and

WHEREAS, the California Fish and Game Commission adopted the nation's first scientifically based network of marine protected areas along the California coastline, which was created to help ensure that the natural resources, marine ecosystem functions, and marine natural heritage of the state are protected for current and future generations; and

WHEREAS, hundreds of millions of California residents and visitors appreciate the state's ocean and coast for a myriad of reasons, including supporting commercial and recreational fishing, recreation, exploration, relaxation, sustenance, and enjoyment of its iconic natural beauty; and

WHEREAS, there has been no new offshore oil and gas lease in California since the 1969 blowout of a well in federal waters, offshore Santa Barbara County, that spilled millions of gallons of crude oil into the ocean and onto the beaches, fouling the coastline and representing the largest oil spill in waters offshore California; and

WHEREAS, as recently as May 2015, California experienced another oil spill during which a pipeline ruptured near Refugio State Beach in Santa Barbara County, releasing thousands of gallons of crude oil into the Pacific Ocean and creating a nine-mile oil slick along the coast; and

WHEREAS, beginning in 1921, and many times since, the California State Legislature enacted laws that withdrew certain offshore areas from oil and gas leasing, and by 1989 the state's offshore oil and gas leasing moratorium was in place; and

WHEREAS, in 1994, the California State Legislature made findings in Assembly Bill 2444 (Chapter 970, Statutes of 1994) that offshore oil and gas production in certain areas of state waters poses an unacceptably high risk of damage and disruption to the marine environment; and

WHEREAS, with passage of the same bill, the California State Legislature and governor created the California Coastal Sanctuary for all of the state's unleased waters subject to tidal influence, where new oil and gas leases are prohibited unless specific conditions are met during an energy crisis

WHEREAS, Section 18 of the Outer Continental Shelf Lands Act (43 U.S. Code [U.S.C.] 1331 et seq.) requires the preparation of a nationwide offshore oil and gas leasing program that sets a five-year schedule of lease sales implemented by the Bureau of Ocean Energy Management within the U.S. Department of the Interior; and

WHEREAS, consistent with the principles of Section 18 and the resulting, regionally-tailored leasing strategy, the current exclusion of the Pacific Outer Continental Shelf from new oil and gas development is consistent with the long-standing interests of Pacific Coast states, as framed in the 2006 Agreement on Ocean Health adopted by the governors of California, Washington, and Oregon; and

WHEREAS, the Bureau of Ocean Energy Management recently released a final 2017-2022 leasing program that continues the moratorium on oil and gas leasing in the undeveloped areas of the Pacific Outer Continental Shelf; and

WHEREAS, Governor Jerry Brown, along with previous California governors, has united with the governors of Oregon and Washington in a commitment to develop robust renewable energy sources to reduce dependence on fossil fuel and help reach carbon emission goals; and

WHEREAS, burning fossil fuels exacerbates global climate change, which increasingly impacts the sustainability of marine and terrestrial ecosystems, including fish and wildlife, in California and beyond; and

WHEREAS, there are renewed calls for opening offshore areas to drilling and for lifting moratoriums on energy production in federal areas, which could lead to more oil spills and increased dependence of fossil fuels; and

WHEREAS, the California Fish and Game Commission considers new oil and gas development offshore California to be a threat to environmental health, including our marine ecosystems, fisheries and wildlife; and

WHEREAS, the California Fish and Game Commission also considers new oil and gas development offshore California to be a threat to the economy, given that California sustains more than \$18 billion in recreation and tourism that depends upon a healthy ocean and coast; now, therefore,

BE IT RESOLVED that the California Fish and Game Commission strongly and unequivocally supports the current federal prohibition on new oil or gas drilling in federal waters offshore California, opposes attempts to modify the prohibition, and will consider any appropriate actions to maintain the prohibition; and, finally,

BE IT RESOLVED that the California Fish and Game Commission will transmit copies of this resolution to the president and vice president of the United States, to the governor of California, to the majority and minority leaders of the United States Senate, to the speaker and minority leader of the United States House of Representatives, to each senator and representative from California in the Congress of the United States, to the secretary of the United States Department of the Interior, to the director of the Bureau of Ocean Energy Management, and to each member of the California State Legislature.

Dated June 22, 2017

Eric Sklar, President

**Jacqueline Hostler-Carmesin, Vice
President**

Anthony C. Williams, Member

Russell E. Burns, Member

Peter S. Silva, Member

Valerie Termini, Executive Director

DRAFT