

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 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. 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.

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 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

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

² [FGC 15007](#).

process. The public interest determination requires careful weighing of the Considerations relevant to each lease proposal. Thus, one specific Consideration cannot by itself force a specific decision, but rather 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.

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.
- 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.

Considerations

Potential impacts or concerns:

- 1 Lease area is compatible with administrative kelp bed designations⁸.
- 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 would not unreasonably impede public access to state waters for purpose of commercial and/or recreational fishing, navigation, commerce, or coastal recreation⁹; this should include

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 T14, CCR, Section [165.5](#).

⁹ FGC Section [15411](#).

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 and avoid impacts to special-status species, including species with a threatened or endangered designation.
- 7 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;
 - meet the minimum production and planting requirements per acre¹⁰.

Potential benefits:

- 1 Lease activities would benefit the state and surrounding community by providing employment and economic opportunity.
- 2 Lease activities would provide fresh, locally sourced product, benefiting local food security, and supplementing wild-harvested supplies.
- 3 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.

¹⁰ T14, CCR, Section [237](#).

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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 bring to light potentially significant environmental concerns that can be evaluated in depth through CEQA.

Constraints

- Lease is 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 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."
- 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).
- Leases activities are consistent with established best management practices within the industry.

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.
 - Lease would not impede commercial or recreational boat navigation 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 the ability of the site and surrounding areas to support ecologically significant flora and fauna and avoids areas within sensitive habitats, including seagrass, kelp, and rocky reef habitat.
- Lease is sited to avoid impacts to special-status species, including 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 mechanical harvesting devices, hydraulic pumps, pesticides or other chemicals, etc.
- If appropriate, lease proposal includes plans to:
 - prevent introduction and/or spread of invasive species, pathogens, disease, and pests;
 - minimize and monitor marine debris;
 - maintain regular 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
 - 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 detrimental to adjacent native wildlife (FGC Section 15102).