

Background Context for Public Interest concept discussion related to Aquaculture Leasing

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The following is a simple background discussion of the "public interest" concept as used in Fish & Game Code (FGC) for purposes of considering aquaculture (or state water bottom) leases, as it may inform further public discussion of the topic.

Examples from FGC tied to leasing of state water bottoms for aquaculture (link to relevant code sections: [15400 et seq.](#)) include:

Section 15400a, which states that:

*...No state leases shall be issued, **unless the commission determines that the lease is in the public interest** in a public hearing conducted in a fair and transparent manner, with notice and comment, in accordance with commission procedures.*

And Section 15404a, which states that:

If the commission finds that the area applied for** is available for lease and that the lease **would be in the public interest, it shall publish a notice that the area is being considered for leasing.

There are no policy definitions or criteria for "public interest" found in FGC, and it is a broader concept around which there is much legal and policy debate with little concrete guidance for our specific case.

Further complicating the Commission's consideration of this concept is the role of the California Environmental Quality Act (CEQA) in evaluating and disclosing potential environmental impacts before deciding to issue a state water bottom lease – and how public interest values might be defined in tandem with CEQA's well-defined, publicly-transparent review process.

So, while the issuance of a new lease would be considered a "project" for purposes of CEQA, thereby triggering environmental impact review (PRC §21065), it is unclear what should be included, *at this stage in the process prior to CEQA*, to determine that a particular lease "would be in the public interest". In other words, since a project will be more closely analyzed for its potential environmental impacts within the CEQA review, what impact considerations, if any, should be included in the preliminary public interest determination so as not to duplicate effort or over-simplify or pre-decide before the impact analyses that would be forthcoming?

It has been previously noted by this Commission that the Legislature, in CA Public Resources Code §826, finds and declares that it is in the interest of the people of the state that the practice of aquaculture be encouraged (for a variety of reasons), and that while this passage may apply to aquaculture as a practice more broadly, it may fall short in its application to every specific new lease request. It does, however, provide criteria upon which the practice is considered to be in the interest of the people of the

state, including augmented food supplies, expanded employment, promotion of economic activity, the increase of native fish stocks, enhanced commercial and recreational fishing, and to protect and better use the land and water resources of the state.

Certain statutory or regulatory requirements may contra-indicate a proposed aquaculture lease site from further consideration at first glance. Other factors may be more nuanced and require further consideration (through CEQA and/or public hearings). Such factors are explored in more detail in the Initial Draft Criteria for Public Interest Determination and combine with the above considerations to inform further public discussions.