

Response to Public Comments Regarding Potential Public Interest Criteria for Shellfish and Seaweed Aquaculture Lease Applications

Prepared for November 17, 2022 Marine Resources Committee meeting

November 14, 2022

The California Department of Fish and Wildlife (CDFW) developed and released two public drafts of potential criteria to determine whether an aquaculture lease applied for would be in the public interest (Criteria), pursuant to California Fish and Game Code Section 15400; the first draft (Draft 1) was released in June 2022 and the second draft (Draft 2) in September 2022. The California Fish and Game Commission (Commission) and CDFW hosted an informational webinar on July 12, 2022, to provide additional context and answer questions related to Draft 1 of the proposed Criteria. On September 30, 2022, the Commission and CDFW hosted a public workshop to solicit feedback on Draft 2 of the Criteria.

Public comments were received throughout the year — both before and after draft Criteria were developed — including at the March 2022 and July 2022 Commission Marine Resources Committee (MRC) meetings, at the September 2022 public workshop, and through written submissions. This document provides a list of comments on the two drafts of Criteria received between June 7, 2022, and October 13, 2022 in chronological order in Table 2. A summary of the comments and staff responses to those comments is provided in Table 3.

Table 1. Acronyms and abbreviations used in this document

Acronym/Abbreviation	Meaning
BMP	Best Management Practice
CDFW	California Department of Fish and Wildlife
CDPH	California Department of Public Health
CEQA	California Environmental Quality Act
Commission	California Fish and Game Commission
CSLC	California State Lands Commission
FGC	Fish and Game Code
MRC	Marine Resources Committee
NOAA	National Oceanographic and Atmospheric Association

Table 2. List of comments, including commenter name and affiliation, comment format, and whether the comment focused on Draft 1 (June 2022) or Draft 2 (September 2022) of the proposed criteria.

Comment No.	Comment Date	Name and Affiliation	Comment Format; referring to (Draft 1, Draft 2)
1	6/7/22	California Ocean Protection Council	Written; Draft 1
2	6/24/22	California Department of Public Health	Written; Draft 1
3	6/29/22	Richard James, Coastodian	Written; Draft 1
4	6/29/22	Michael Lee, California Aquaculture Association	Written; Draft 1
5	6/30/22	Karen Reyna, Greater Farallones National Marine Sanctuary	Written; Draft 1
6	6/30/22	Ashley Eagle-Gibbs (EAC of West Marin), Chance Cutrano (Resource Renewal Institute), Barak Kamelgard (Los Angeles Waterkeeper), Emily Parker (Heal the Bay), and Benjamin Pitterle (Santa Barbara Channelkeeper)	Written; Draft 1
7	7/1/22	Doug Bush, The Cultured Abalone Farm	Written; Draft 1
8	7/1/22	Barbara Salzman, Marin Audubon Society	Written; Draft 1
9	7/1/22	Diane Kim, Nathan Churches, Kelly Stromberg, and Ian Jacobson (Holdfast Aquaculture, LLC)	Written; Draft 1
10	7/5/22	California State Lands Commission	Written; Draft 1
11	7/12/22	John Finger, Hog Island Oyster Company	Written; Draft 1
12	7/12/22	Brian D. Pendleton, Ventura Port District	Written; Draft 1
13	7/14/22	Ashley Eagle-Gibbs, Environmental Action Committee of West Marin	Verbal; Draft 1
14	7/14/22	Geoff Shester, Oceana	Verbal; Draft 1
15	7/14/22	Chris Voss, Commercial fisherman of Santa Barbara	Verbal; Draft 1
16	7/14/22	Jaime Diamond, Stardust Sport Fishing	Verbal; Draft 1
17	7/14/22	Bernard Friedman, Santa Barbara Mariculture Company	Verbal; Draft 1
18	7/14/22	Emily Parker, Heal the Bay	Verbal; Draft 1
19	7/14/22	Karen Reyna, NOAA/Greater Farallones National Marine Sanctuary	Verbal; Draft 1
20	7/14/22	Robert Smith, representing Ventura Port District and Hog Island Oyster Company	Verbal; Draft 1
21	8/1/22	Kevin Roux, concerned public person/Santa Barbara channel	Written; Draft 1
22	9/30/22	Ben Pitterle, Santa Barbara Channelkeeper	Verbal; Draft 2
23	9/30/22	Barak Kamelgard, Los Angeles Waterkeeper	Verbal; Draft 2
24	9/30/22	Rebecca Schwartz Lesberg	Verbal; Draft 2
25	9/30/22	Robert Smith, K&L Gates	Verbal; Draft 2
26	9/30/22	Ashley Eagle-Gibbs, EAC of West Marin	Verbal; Draft 2

Comment No.	Comment Date	Name and Affiliation	Comment Format; referring to (Draft 1, Draft 2)
27	9/30/22	Maren Farnum, California State Lands Commission	Verbal; Draft 2
28	9/30/22	Emily Parker, Heal the Bay	Verbal; Draft 2
29	9/30/22	Christopher Lang, UCSC Graduate Student	Verbal; Draft 2
30	9/30/22	Caitlynn Birch, Oceana	Verbal; Draft 2
31	9/30/22	Erica	Verbal; Draft 2
32	9/30/22	Doug Bush, The Cultured Abalone Farm	Verbal; Draft 2
33	9/30/22	Nathan Churches, Holdfast Aquaculture	Verbal; Draft 2
34	9/30/22	Emily Shinn, Don't Cage Our Oceans	Verbal; Draft 2
35	9/30/22	Richard James, Coastodian	Verbal; Draft 2
36	9/30/22	Doug Bush, The Cultured Abalone Farm	Written; Draft 2
37	10/10/22	Nathan Churches, Holdfast Aquaculture	Written, Draft 2
38	10/13/22	Caitlynn Birch, Oceana	Verbal; Draft 2

Table 3. Summary of specific comments associated with comments itemized in Table 2, and staff responses to each comment. Comment numbers 1-21 are in response to Draft 1 and comment numbers 22-38 are in response to Draft 2.

Comment No.	Summary of Comment	Response
1a	Recommends revising criteria to exclude all finfish aquaculture to be aligned with the Guiding Principles and the Action Plan which specifically call for no finfish of any species in state waters.	The following sentence was added: "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 state." Also note the revised title of this document, constraining the subject to "shellfish and seaweed aquaculture lease applications".
1b	Recommends including climate change considerations, such as sea level rise, and predicted ocean acidification or hypoxia levels into lease siting.	A new criterion has been added that recognizes protecting ecosystem services related to climate change, such as enabling wetland migration as sea levels rise. An additional consideration acknowledges the benefit lease activities might have in advancing mitigation and/or adaptation strategies in response to climate change.
1c	Asks if "unreasonably impede" is a quantifiable or legally defined term.	No, it is not a legally defined term. If not immediately clear, the Commission will evaluate whether something is "unreasonably impeded" based on results of in-depth study, evaluation, and consultation. No changes made in response to this comment.
1d	Asks if the consideration on siting leases in areas that would minimize risks to public health includes areas of known poor water quality. Suggests that be included explicitly as a siting consideration to avoid.	If a lease for shellfish for human consumption was proposed in an area of known poor water quality, it would not be in the public interest. If the water quality of the area is unknown or uncertain, it would require further evaluation. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
1e	Asks how will "unreasonably interfere" be determined related to the ability of a lease site and surrounding areas to support ecologically significant flora and fauna.	If there are components of the proposed lease that would clearly inhibit supporting ecologically significant flora and fauna, then the project would not be in the public interest. However, and most likely, there might be modifications or mitigation measures that the project could take to lessen the impact. Whether the proposed lease activities "unreasonably interfere" with ecologically significant flora and fauna would be informed by in-depth study, evaluation, and consultation, including environmental analysis through CEQA. No changes made in response to comment.
1f	Asks if lease is proposed during a low kelp year, how will it be evaluated? How will kelp coverage be determined?	CDFW has maps available displaying both average and maximal kelp density maps over time based on historic and ongoing monitoring surveys; these could be used as a reference for evaluating the lease site. No changes made in response to this comment.
1g	Asks why the term "if appropriate" is included in the consideration on plans a lease proposal should include. Suggests that all the listed plans should be required in a lease proposal.	Accepted comment. The phrase "if appropriate" has been removed.
1h	Asks whether the plans to maintain regular inspections are related to infrastructure only. What about regular monitoring/inspections for water quality, containment of cultured species, etc.?	Added new language in the consideration to include plans to maintain regular inspections of infrastructure and culture activities. Water quality is outside the purview of CDFW and the Commission and would be managed by the Regional Water Quality Control Board.
2	No comments or concerns.	No response required.
3	Comment requests clarification on which best management practices are being referenced in the constraint "Lease activities are consistent with established best management practices."	This requirement (constraint) has been removed, so this comment is now moot. The Commission has previously committed to developing a requirement for Best Management Practices plans for every lease area.

Comment No.	Summary of Comment	Response
4a	Suggests the sub consideration "Lease area is located outside of high-use vessel routes, shipping lanes, and navigable channels" further describes navigable channels "as delineated on coastal navigational charts."	No changes made in response to this comment.
4b	Suggests the addition of the word "unreasonably" before "impede" in the sub consideration "Lease would not impede commercial or recreational boat navigation and safety."	This sub consideration has been removed, so this comment is now moot.
4c	Suggests that the consideration "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" include the phrase "as reviewed by the NOAA Fisheries Office of Protected Resources and its Office of Habitat Conservation."	No changes made in response to this comment.
4d	Suggests the additional consideration "Lease would assist in supplementing wild local species that are heavily fished or otherwise"	Added two new considerations to address this comment. "Lease activities would provide fresh, locally sourced product, benefiting local food security, and supplementing wild-harvested supplies" and "Lease activities would help increase native fish stocks or enhance commercial and recreational fishing."
4e	Suggests adding the consideration "Lease would benefit the environment and assist in mitigating climate change by creating habitat, filtering excess nutrients, and removing CO2 (carbon sequestration); reducing carbon footprint of comparable wild caught and/or imported product - e.g., transportation costs; reducing environmental impacts of comparable wild caught and/or imported product - e.g., bycatch."	Added two new considerations to address this comment: "Lease activities would contribute environmental benefits, such as habitat creation, nutrient uptake or filtration, species recovery, or other ecosystem services" and "Lease activities would advance mitigation and/or adaptation strategies in response to climate change, including carbon sequestration."

Comment No.	Summary of Comment	Response
4f	Suggests adding the consideration "Lease would benefit local, regional, state, and national food security and reduce the need for imported products by providing fresh, locally sourced seafood that is safe to eat."	Added the new consideration "Lease activities would provide fresh, locally sourced product, benefiting local food security, and supplementing wild-harvested supplies."
5a	Requests clarification on how federal policies (or permit issuance criteria) related to aquaculture activities are considered by the Commission. NOAA has aquaculture policies that support aquaculture and policies on how to manage certain natural resources that aquaculture can impact. For example, there is a NOAA Policy on no net loss of eelgrass and guidance on mitigation if there are known impacts from an activity.	Federal policies are considered prior to issuing a lease and typically occur during consultations as part of the CEQA process or other permitting. Additionally, all aquaculture lease holders are required by the conditions of a lease with the Commission to "obtain and maintain all necessary registrations, permits, and any other entitlements", which includes permits resulting from federal agency consultation and approvals. No changes made in response to this comment.
5b	Made suggestions on alternative word choices for the sentence: "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 bright line potentially significant environmental concerns that can be evaluated in depth through CEQA."	This sentence has been removed, so this comment is now moot. No changes made in response to this comment.
5c	Requests clarification on how policies relate to considerations. For federal rulemaking, federal policies that apply must be considered and can result in not moving a project forward. Applicants likely want to know if there are policies of the state (and the federal government) that could make permitting a lease a problem.	See response to comment 5a. State or federal policies that would preclude a lease from being issued are categorized as requirements. If the lease could meet compliance with particular state and federal policies through modification or mitigation measures, those policies would be categorized as considerations. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
5d	States that some of the constraints have codes or regulations cited and some do not. Requests clarification on whether constraints related to Native American cultural resources and invasive species are related to state regulations.	Avoiding adverse impacts to Native American cultural resources is a state policy directive that could preclude a lease from being issued depending on the location selected, which is why it is classified as a requirement (constraint). The invasive species constraint has been removed from the criteria, so this comment is moot. No changes made in response to this comment.
5e	States that the constraints include items required by legislation, regulation, and policy, so it is hard to understand where something is a very hard line that cannot be crossed. Suggests that there may be a better way to articulate these constraints in terms of laws, versus regulations, versus other policies of the state.	The requirements (constraints) should all be met regardless of whether they are based on law, regulation, or policy. Differentiating between which are required by law versus regulation versus policy is not necessary because each of them should be viewed as a "very hard line that cannot be crossed." No changes made in response to this comment.
5f	Requests clarification on how federal policies are considered as it relates to a finding relative to the public interest.	See responses to comments 5a and 5c.
5g	States that most of the considerations seem to do with where to site a lease to avoid impacts to specific other public resources as opposed to things to consider about how to site it and what methodologies to use. Suggests framing the considerations into different categories (i.e., considerations for where to site a lease, considerations on appropriate methods, materials, and practices).	Staff appreciate the suggestion on how to reframe the considerations; however, no changes made in response to this comment.
5h	Suggests adding the term "adjacent to" recognized mooring areas. Aquaculture operations must be sited a certain distance away from mooring areas, as determined by CDPH.	Modified criteria to read: "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)."

Comment No.	Summary of Comment	Response
5i	Suggests that there may be a better way to frame the consideration "If appropriate, lease proposal includes plans to: ..." Suggests framing this as what should be considered important for CEQA review so that impacts can be determined and therefore the "public interest" determination can be made. Using the phrase "If appropriate" may not be helpful to an applicant who does not know when the plans would be appropriate.	Staff appreciate the suggestion on how to reframe the consideration but have decided not to implement the suggestion. What should be considered important for CEQA review will be influenced by project specifics. The phrase "if appropriate" has been removed from the draft criteria. No changes made in response to this comment.
5j	Suggests that the consideration "If appropriate, lease proposal includes plans to: ..." be framed differently. Suggests instead "Plans that demonstrate that they 1) prevent introduction and/or spread of invasive species, pathogens, disease, and pests; 2) minimize and monitor marine debris; 3) include regular inspections; 4) ...will help the Commission determine that a state aquaculture state water bottom lease is in the public interest."	Staff appreciate the suggestion on how to reframe the consideration; however, no changes made in response to this comment.
5k	Suggests that the consideration " Lease activities do not include culture of any species where it is determined it would be detrimental to adjacent native wildlife" seems like a constraint rather than a consideration. Suggested categorizing all elements that are driven by regulations into one section.	Staff recategorized this criterion as a requirement (constraint) as it is governed by statute and there is a clear way to evaluate whether it has already been determined that a culture species or location would be detrimental to adjacent native wildlife. In response to the suggestion that elements driven by regulations be categorized into one section, there are some considerations that are driven by statute and regulations that have remained considerations and not requirements because they are going to depend on project specifics and mitigation measures. Whether or not the lease meets these criteria is not a question that can be answered without further evaluation, and so those items are categorized as considerations.

Comment No.	Summary of Comment	Response
6a	Requests that the criteria explicitly state that they do not apply to finfish, which is not currently permitted in state waters without the completion of a programmatic planning process.	See response to comment 1a.
6b	Requests more clarity on how the presence of constraints and considerations will impact the decision to issue a lease. Will considerations be given a lower weighting than constraints? Many of the considerations are very important and are also mandated by regulations.	Staff expanded the description of how the constraints and considerations will be evaluated in making the public interest determination, including the statement: "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."
6c	Requests that considerations are viewed as prohibitions in most cases, requiring written exceptions for good cause and public benefit.	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. This description has been added to clarify the role of considerations in determining public interest.
6d	Requests that the constraints and considerations be viewed collectively and suggested language to be added to clarify that point. When viewed individually, it may not make sense to deny a lease application based on a consideration. However, when the various considerations are reviewed together, the lease may have a severe impact on coastal communities, economies, and ecosystems.	Considerations are viewed collectively. The public interest determination represents the net effect of balancing all Considerations. This description has been added to clarify how considerations are evaluated in determining public interest.

Comment No.	Summary of Comment	Response
6e	Suggests that the first two considerations on interference with public access and administrative kelp beds might be more appropriate as constraints.	These considerations are mandated by statute and regulations, however, whether the project impedes public access or interferes with administrative kelp beds can depend on project specifics and planned mitigation measures, which is why they are categorized as considerations and not requirements (constraints). No changes made in response to this comment.
6f	Authors are concerned that the aquaculture industry does not have clearly defined best management practices referenced in the Constraints. Until CDFW and Commission complete the best management practices rulemaking process, the authors request that newly issued leases are consistent with past Coastal Development Permit conditions issued for similar leases.	See response to comment 3. Additionally, all aquaculture lease holders are required by the conditions of a lease with the Commission to "obtain and maintain all necessary registrations, permits, and any other entitlements", which includes Coastal Development Permits and compliance with conditions therein. As this is already a requirement of the lease holder, it is not appropriate to include in the public interest determination criteria. No changes made in response to comment.
6g	Suggests adding the constraint: "Lease activities do not jeopardize species with a threatened or endangered designation (FGC Section 2053(a))."	Lease activities that involve culture species or locations where it has been determined that it would be detrimental to adjacent native wildlife is already included in the criteria as a requirement (constraint). That would include activities that could jeopardize species with a threatened or endangered designation. Avoiding impacts to special-status species, including species with a threatened or endangered designation is also included in the criteria as a consideration. Making this a requirement (constraint) rather than a consideration is inappropriate because whether the lease impacts special-status species can depend on project specifics and planned mitigation measures. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
6h	Suggests adding the constraint: "Discharges from lease activities do not exceed total maximum daily loads of impaired waters (CWA sections 303(d) and 305(b))."	All aquaculture lease holders are required by the conditions of a lease with the Commission to "obtain and maintain all necessary registrations, permits, and any other entitlements", which includes approvals from the local Regional Water Quality Control Board to ensure water quality standards are met. As this is already a requirement of the lease holder, it is not appropriate to include in the public interest determination criteria. No changes made.
6i	Suggests adding the consideration: "Lease would not create unreasonable probability of whale and/or other marine mammal entanglement."	Although whales and other marine mammals are not specifically identified in the criteria, avoiding impacts to them would fall under existing criteria to avoid impacts to special-status species. Additionally, the draft criteria include a constraint that lease activities do not include culture of any species at any location where it is determined it would be detrimental to adjacent native wildlife, which would include marine mammals. No changes made in response to this comment.
6j	Suggests adding the consideration: "Lease activities would benefit the surrounding community and economy by providing food security and economic opportunity and not contribute to inequitable and exclusionary culinary practices."	Accepted in part. Added two new considerations: "Lease activities would benefit the state and surrounding community by providing employment and economic opportunity" and "Lease activities would provide fresh, locally sourced product, benefiting local food security, and supplementing wild-harvested supplies." Culinary practices related to lease activities are not under the Commission's or CDFW's jurisdictions.
6k	Suggests adding the consideration: "Lease activities do not unreasonably interfere with educational activities and opportunities."	Staff are unaware of a realistic method to evaluate whether lease activities would unreasonably interfere with education activities and opportunities. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
6l	Suggests adding the consideration: "Lease activities do not unreasonably interfere with tourism activities and opportunities."	Criteria already include conditions that lease would not unreasonably impede public access to state waters for recreational fishing or coastal recreation. Staff are unaware of other tourism activities or opportunities that have not already been accounted for in the drafted criteria. No changes made in response to this comment.
6m	Suggests adding the consideration: "Lease activities do not inhibit, or interfere with, ecosystem services, blue carbon sequestration or wetland migration, as sea level rises."	Accepted in part. Added on to an existing consideration: "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."
6n	Suggests adding the consideration: "Lease activities would contribute to overall resiliency of the surrounding ecosystems through restorative practices."	Added two new considerations: "Lease activities would contribute environmental benefits, such as habitat creation, nutrient uptake or filtration, species recovery, or other ecosystem services" and "Lease activities would advance mitigation and/or adaptation strategies in response to climate change, including carbon sequestration." Staff believe this addition addresses the underlying theme of the comment but provides more specificity than the language suggested.
6o	Suggests adding the consideration: "Lease activities would not unfairly expose poor or marginalized communities to harms associated with the lease activities."	Staff are not aware of any circumstances where lease activities could unfairly expose poor or marginalized communities to harms, but CEQA provides mechanism to analyze potential impacts (harms) to all communities. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
6p	Suggests adding the consideration: "Evidence can be provided to show that the lessee is a good actor and will uphold the grounds of their lease agreement."	Staff are unaware of a fair and reliable way of verifying at the time of application that the lessee will be a good actor and will uphold the grounds of their lease agreement. This is not appropriate to require at the public interest decision point but is enforced once the lease is in operation as all leases include grounds for termination should a lessee fail to uphold the conditions of the lease agreement. No changes made in response to this comment.
7a	States the opinion that effort to consider the meaning of a public interest finding is perplexing given that all Commission decisions are based on a determination of public interest and is concerned that aquaculture is being singled out for this exercise. Does not believe that the language in FGC §15400 is meant to define the broad set of criteria that the Commission already has available in its jurisdiction in order to make that determination.	Comment is noted, but the process must continue at the request of the Commission. Commissioners requested clearly defined criteria that can be used to fulfill the requirements of FGC §15400 to only issue state leases that the Commission determines to be in the public interest. No changes made in response to this comment.
7b	States the opinion that although this process is an attempt to improve the Commission's ability to decide on aquaculture leases by formally stating that it will be based on existing criteria established in FGC §15400, commenter questions what value that adds and whether it strengthens the permit evaluation process.	Contrary to the commenter's statement, there are no criteria established to determine whether an aquaculture lease is in the public interest; the standards described in FGC §15400 only apply to marine finfish aquaculture in state waters, should that activity ever be approved by the State. Defining the criteria will improve efficiency and transparency of the determination process. No changes made in response to this comment.
7c	States concern that this effort could become an additional layer of subjective decision making that will add additional red tape to the process, and not be analyzed in a quantitative or scientific way.	Comment is noted. It is not the Commission's intention to add an extra layer of red tape to the process of issuing a lease. The effort aims to balance the requirement to make a public interest determination with additional requirements, such as CEQA and other permitting, in a way that is complementary rather than duplicative. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
8a	Suggests adding the constraint: "Lease is located outside of federal and other jurisdictional marine protected areas, marine managed areas, and special closures."	Accepted in part. Incorporated "federal" and "other jurisdictions" into existing requirement (constraint) that was previously focused on state protected and managed areas: "Lease is not located within marine protected areas, marine managed areas, and special closures under state, federal, or other jurisdictions that prohibit aquaculture."
8b	Suggests adding the constraint: "Leases avoid areas that are frequented by rafting or feeding migratory waterfowl or foraging shorebirds."	Although shorebirds are not specifically identified in the criteria, avoiding impacts to special-status bird species is already included in the considerations. Additionally, the draft criteria include a requirement (constraint) that lease activities do not include culture of any species at any location where it is determined it would be detrimental to adjacent native wildlife, which would include all other species of birds. No changes made in response to this comment.
8c	Suggests adding "pharmaceuticals" to the list of materials known to cause environmental degradation, and further clarifying that "pharmaceuticals includes anthelmintics, supplements, as well as antibiotics"	Although not specifically identified in the criteria, pharmaceuticals known to cause environmental degradation would be included in the consideration: "Lease does not propose use of culture methods, chemicals, or materials known to cause environmental degradation." No changes made in response to this comment.
8d	States concern about the potential for humpback whale entanglement in permanent aquaculture gear.	Although humpback whales are not specifically identified in the criteria, avoiding impacts to them would fall under existing criteria to avoid impacts to special-status species. Additionally, the draft criteria include a requirement (constraint) that lease activities do not include culture of any species at any location where it is determined it would be detrimental to adjacent native wildlife, which would include humpback whales. See also: response to comment 6i. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
8e	States concern that finfish aquaculture pens would attract seals, sea lions, and potentially humpback whales and result in potential conflicts between wildlife and fishery management. States concern that an aquaculture fishery might apply for NOAA Fisheries 'lethal take' permits for gear damaging or catch-predating marine mammals.	Finfish aquaculture is not included in the scope of the public interest determination criteria. No changes made in response to this comment.
8f	States that language on what the fishery plans to do about impacts seems tentative, particularly on marine debris. States that when Drakes Bay Oyster Company was in operation, Greater Farallones NMS's Beach Watch coastal monitoring surveyors regularly found marine debris from the aquaculture farm. Commenter suggests adding the words "prevent" and "retrieve" to the marine debris consideration.	Comments noted. Modified sub consideration on marine debris: "the proposed lease will include measures to... prevent, minimize, clean up, and monitor marine debris"
9	States general support for the elements contained in the draft criteria. Suggests that an additional consideration be added to ensure a diversity of tenants and prevent California aquaculture from becoming monopolized by a single entity.	Added the consideration "Consideration of prior leases are taken into account to encourage sustainable and equitable access to leases and to discourage monopolies."

Comment No.	Summary of Comment	Response
10a	<p>Provided information on the similar process undertaken by CSLC in leasing decisions. In each CSLC staff report for every lease application includes a section called "Public Trust and State's Best Interests". A typical finding under this section may read: "Find that the proposed lease will not substantially impair the public rights to [insert other public trust-consistent uses that may co-occur in same area, such as navigation, public access, safety, commerce, fishing, environmental stewardship, recreation, etc.] or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State."</p> <p>CSLC's obligation to find that a lease is within the State's Best Interests comes from PRC §6005, as well as a court decision related to Hansen Sand Mining (requiring proactive and explicit "findings" supporting CSLC lease decisions).</p>	<p>Comment noted. PRC §6005 seems to also apply to the Commission consideration of leasing public land for a state water bottom lease.</p>
10b	<p>Suggests expanding the draft criteria to include consideration of the benefits that issuing the lease would have to the public, such as the economic, environmental, and/or cultural benefits that would enhance the welfare or well-being of the general public. For example, cultivation of species locally could reduce the greenhouse gas/climate footprint of imported seafood, projects that are led or partnered with Native communities, and projects with social or racial equity benefits.</p>	<p>Accepted in part. Added a new considerations section entitled "Potential Benefits" that cites six potential socio-economic and environmental benefits that might arise from a proposed project.</p>

Comment No.	Summary of Comment	Response
10c	Requested some clarification on the language pertaining to CSLC "certification" of the lease area and suggested a meeting between CSLC and the Commission to discuss the details and develop a process for coordination.	Commission and CDFW staff plan to meet with CSLC staff to resolve questions without the need to revise criteria.
10d	Recommends clarification on "established best management practices" and asks whether there will be a best management practices document that will be provided to the lessees.	See response to comment 3.
10e	Suggests that a lease should not interfere with any locations included in long-term monitoring research programs, such as CalCOFI or other established research programs.	Such interferences should be identified in the CEQA scoping and analysis and associated public hearing processes, with avoidance and/or mitigation measures being possible remedies for concerns. No need for change to criteria, but noted for CEQA scoping lists.
10f	Suggests that "navigable channels" be replaced with "navigation channels"	Accepted change.
10g	Regarding the consideration "If appropriate, lease proposals include plans to....", the commenter asks if these conditions are not met, what is the remedy? Immediate removal of infrastructure? Is there a cure period?	This condition is related to whether the project has plans to prevent the negative impacts described, not whether the negative impacts are prevented in practice. The latter cannot be evaluated at the time of public interest determination and will be managed through conditions of the lease agreement if approved. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
11a	<p>States that many of the factors identified in the "Considerations" section (considerations #4, 5, 6 and 8) are duplicative of reviews and analysis already conducted under other regulatory requirements. Agrees that the issues identified should be considered prior to lease approval, but they are more appropriately considered during the CEQA process and pursuant to other well-established regulatory processes. States that evaluation of issues at the preliminary stage will not only be premature, in that it will not have the benefit of a full CEQA environmental analysis, but it also risks prejudging these issues without a thorough evaluation of the project, and with input from other state and federal agencies. Suggests removing "Considerations" from the draft entirely. Suggests that it should be sufficient to state that the applicant must comply with the requirements of CEQA, ESA, and other applicable regulatory requirements.</p>	<p>The goal of including the Considerations is not to duplicate reviews and analyses already conducted, but rather to flag any components of the proposed lease activities that are unlikely to meet the Considerations even after in-depth study, evaluation, and consultation. This has the benefit of helping refine the focus of subsequent environmental analysis through CEQA and preventing the applicant from investing significant time and money on a CEQA analysis if the project is unlikely to be considered in the public interest. No changes made in response to this comment.</p>

Comment No.	Summary of Comment	Response
11b	<p>Concerned that "Considerations" will complicate and confuse the process and lengthen the already significant timeline for lease approval. The draft criteria do not include standards for how criteria will be evaluated, how mitigation measures and other best management practices are considered and incorporated, or the appropriate level or extent of analysis. Because of the lack of clarity on how the considerations will be evaluated by the Commission in issuing a lease, the proposed criteria will invite additional challenges or litigation by those who believe they have not been considered appropriately. Commentor stresses the importance to focus efforts on simplifying process, not creating additional duplicative steps for both applicants and CDFW staff.</p>	<p>Added additional clarification to Draft 2 on how the public interest determination fits within the larger lease approval process and how the considerations will be evaluated in making a public interest determination.</p>
11c	<p>States that the regulations mandating a public interest finding (FGC §15404(a) and §15400(a)) were adopted as a result of Senate Bill 1917 in 1982 which had the goal of promoting development of an aquaculture industry in California, not restrict where farms could be sited.</p>	<p>Using the term "public interest" in the statute opens up the decision to more considerations than just whether the lease will promote development of an aquaculture industry. The lease also must not unreasonably impede access to public trust needs and values that may co-occur in same area, such as navigation, commerce, fishing, environmental stewardship, and recreation. For that reason, considerations related to public trust needs and values beyond economic interests are included in the criteria. No changes made in response to this comment.</p>
11d	<p>States that the consideration on minimizing risks to public health as determined through consultation with CDPH is not appropriate to include in the public interest determination criteria because the CDPH certification occurs prior to the harvest of any product, which may occur two to three years after project approval and installation.</p>	<p>If the lease is located in waters that would clearly be a risk to public health, then the lease would not pass the preliminary public interest determination. Certification of the growing area is not required before the lease is issued. No changes made in response to this comment.</p>

Comment No.	Summary of Comment	Response
11e	States that while locating leases outside of high-use vessel routes, shipping lanes, and navigable channels is an appropriate consideration, the appropriate agencies to consider this pursuant to their adopted regulations are the U.S. Army Corps of Engineers and U.S. Coast Guard. This usually occurs after a lease is executed and both agencies typically require an executed lease to commence their permitting.	If the lease would clearly impede commercial or recreational boat navigation and safety, then the lease would not pass the preliminary public interest determination. The inclusion of this consideration is not meant to preclude review and analysis by U.S. Army Corps of Engineers and U.S. Coast Guard, but rather highlight areas of the proposal that need further review prior to lease approval if it is not immediately clear whether the lease would impede boat navigation and safety. No changes made in response to this comment.
11f	States that the consideration that the lease not "unreasonably impede public access to state waters..." overstates that concern at the expense of aquaculture in a manner that is not supported by Commission regulations. While FGC Section 15400 provides that "A lease shall not unreasonably interfere with fishing or public trust values...", Section 15411 allows a lessee to "limit public access to the extent necessary to avoid damage to the leasehold" or the farmed product and the Commission "may prohibit any recreational activity in any aquaculture area subject to a state water bottom lease if it determines the activity is detrimental to the enhancement of the resource."	The phrase "unreasonably impede" acknowledges that some level of impediment to public access is necessary in order for the aquaculture lease to operate in public waters. Ensuring that the impediment is not "unreasonable" requires balancing all of the public trust uses, including aquaculture and other commercial and recreational uses; one value is not greater than the others. No changes made in response to this comment.

Comment No.	Summary of Comment	Response
11g	States that the consideration for leases to be located outside of important fishing grounds, including the California halibut trawl grounds, inappropriately elevates interests of halibut trawlers and other fishers over the interests of aquaculture lessees, effectively prohibiting leasing in these areas. There is no regulatory support for this and is contrary to Legislature's direction in Public Resources Code Statute 30411. FGC §8495 is supposed to restrict halibut trawling to certain areas, not elevate trawling in those areas over other permitted ocean uses. This goes beyond Commission's regulatory authority.	This consideration has been removed in Draft 2.
11h	Generally, supports constraints (with minor modifications) because: (1) they are mostly objective; (2) can mostly be identified at the initial stage discussed in FGC §15404(a); and (3) they concern criteria that are likely to eliminate a potential lease area from consideration where additional analysis and/or incorporation of mitigation measures would not likely resolve the issues.	Comment noted. No changes made in response to this comment.
11i	Requests modifying the constraint on marine protected areas since some do allow aquaculture activities (See 14 Cal. Code Regs. §632(b)(91)).	Accepted comment. Added the phrase "that prohibit aquaculture" to ensure leases are not located in marine protected areas that prohibit aquaculture.
11j	Requests modifying the constraint on Native American cultural resources since applicants are required to go through Tribal consultation. All that is known prior to that consultation is whether the site is located within, over, or adjacent to any previously identified Native American cultural resources.	Accepted comment. Added the phrase "previously identified" before Native American cultural resources.
12	Same letter/comments as comment 11.	See responses to comments 11a - 11j
13	How will considerations be weighed? It is important to uplift marginalized communities during aquaculture development.	See responses to comments 6b, 6c, and 6d

Comment No.	Summary of Comment	Response
14	Explicitly state that criteria do not apply to finfish.	See response to 1a.
15	Concerned about increased competing space for ocean uses and cumulative impact.	Included in draft criteria: "Lease would not unreasonably impede public access to state waters for purpose of commercial and/or recreational fishing, navigation, commerce, or coastal recreation; this includes documented high-use vessel routes, shipping lanes, and navigation channels for recreational and commercial uses." Cumulative impacts considered under CEQA's more comprehensive analysis.
16	Requests to keep access to recreational fishing grounds	Included in draft criteria: "Lease would not unreasonably impede public access to state waters for purpose of commercial and/or recreational fishing, navigation, commerce, or coastal recreation; this includes documented high-use vessel routes, shipping lanes, and navigation channels for recreational and commercial uses."
17	Concerned about equitable future for seafood producers. Would like a section about "what you can do" instead of "can't." There is too much financially on individual farmers who are going through permitting.	Added a "Potential benefits" section in the Considerations.
18	Asks how considerations be weighed? Important to uplift marginalized communities during aquaculture development.	See responses to comments 6b, 6c, and 6d.
19	Stressed the nexus between work done federally and the criteria.	See responses to comments 5a, 5c, and 5f.
20	Concerned that considerations are duplicative of other regulatory requirements and would make it less clear for applicants and leaseholders.	See responses to comments 11a and 11b.
21a	States that the Commission with its proposed and current regulations, and desire to release more permits for growing kelp on all levels, whether edible or for commercial products, is in desperate need of re-evaluation.	The comments are outside of the scope of the public interest determination criteria.

Comment No.	Summary of Comment	Response
21b	States that there are no boating safety regulations in place or surface markers indicating kelp growing and harvest areas. Concerned about vessel collision with growing sites, particularly in the Santa Barbara Channel.	All aquaculture lease holders are bound to lease marking requirements described in California Code of Regulations, Title 14 §237. Additionally, all aquaculture lease holders are required by the conditions of a lease with the Commission to "obtain and maintain all necessary registrations, permits, and any other entitlements", which includes approvals from the U.S. Coast Guard and U.S. Army Corps of Engineers to ensure boating and navigation safety. As this is already a requirement of the lease holder, it is not appropriate to include in the public interest determination criteria. No changes made in response to this comment.
21c	States that the Commission has not put forth any regulations on what materials the farms will be constructed of and is concerned about the impact of plastic pollution on marine life and the environment.	The draft public interest criteria include a consideration on whether the lease proposal includes plans to minimize and monitor marine debris, as well as maintaining regular inspections of infrastructure and cultivation gear, and addressing any damaged or lost cultivation materials. No changes made in response to this comment.
21d	States that self-reporting by lease holders will not take place and that the Commission cannot or will not strictly monitor aquaculture farms. States authority of 'our waters' should be transferred to County governments and the National Park Service, specifically to safeguard the Northern Channel Islands.	The comments are outside of the scope of the public interest determination criteria.
22a	Does not believe the criteria are quite ready for adoption yet.	Comment noted. CDFW concurs and plans to develop a third draft.
22b	Does not agree with limiting requirements to statutory or regulatory items.	Staff has limited the requirements (constraints) to non-discretionary conditions that are legal side-boards. Any additional requirements would only be added at the direction of the Commission.

Comment No.	Summary of Comment	Response
23a	The new draft mentions that certain factors would require in-depth study to determine, but it is not clear how that process would work. There would have to be some preliminary evaluation made to decide public interest.	CDFW subject matter experts will use best available science to do a preliminary evaluation of probable impacts. If an in-depth study is necessary to evaluate for significance, that occurs during environmental analysis through CEQA.
23b	Overall, does not think that the second draft responds to feedback from conservation organizations; revisions seem pro industry.	Comment noted. Please see comments 6, 8, 13, 14, 18, 22, 23, 26, 28, 30, 34, 35, and 36 for staff responses to conservation organizations. CDFW plans to develop a third draft.
23c	Glad that finfish is not a part of criteria but that needs to be included as a constraint, not just mentioned in the introduction.	These criteria are specific to shellfish and seaweed. See response to comment 1a.
23d	Unclear why the best management practices criterion was removed and does not agree that it should have been removed.	Best management practices are a tool to address concerns for a specific lease operation, not a criterion for determining public interest. The Commission previously stated its intent that best management practices be developed for each approved lease site.
23e	Not allowing harmful chemicals is good but need to provide a thorough list of what chemicals are not allowed.	Chemical and therapeutic use is regulated by FDA and falls under existing lease requirements to comply with all other federal, state, and local laws. No additional language necessary for criteria.
23f	The additional language “[based on best available science]” is not in code and is unclear what that means.	May consider revision in Draft 3, that includes a reflection of FGC §33 (“credible science” defined), and numerous sections throughout FGC calling for the use and consideration of best available science.
23g	Believes that some of the considerations should be included as requirements and does not understand why they cannot be requirements.	See response to comment 22b.
23h	Suggests also including negative impacts to the economy, not just the positives.	Comment noted. Economic impacts may be either positive or negative.
23i	Environmental justice communities need to be considered more.	May consider in Draft 3.
23j	Pollution and water quality are not considered in the criteria.	They are considered in the context of potential public health consequences

Comment No.	Summary of Comment	Response
23k	The consideration on monopolies now says “discourage” instead of “prevent” monopolies; should have stayed as “prevent”.	May consider in Draft 3.
24	Requested clarification on why eelgrass is nested into a consideration and not a requirement, given statutory protections. Requested clarification on why some of the statutory requirements ended up as requirements versus considerations.	Eelgrass protection is mandated by statute, however, whether the project interferes with eelgrass habitat depends on project specifics and planned mitigation measures, which is why its protection is categorized within considerations and not requirements (constraints).
25a	Supportive of the process and efforts to develop clear guidelines. Supportive of how the considerations have been delineated between requirements and considerations.	Comment noted.
25b	Suggested adding the phrase "the commencement of" before "environmental review under CEQA."	May consider for Draft 3
25c	Many farmers have dealt with potentially significant impacts and avoided impact through mitigation and avoidance. It would be clearer if said explicitly that considerations will be further evaluated in CEQA.	This aligns with staff recommendations and may be considered for Draft 3.
25d	Requirement #3 is unclear, recommend simply saying the lease is not in areas that prohibit aquaculture.	May consider for Draft 3
25e	Suggest removing the phrase in brackets from Consideration #5.	May consider for Draft 3.
25f	Appreciative of including the public benefits in the considerations, as they are recognized in code.	Comment noted.
25g	Regarding Consideration #6, right now the cost of entry is the barrier to entry as opposed to access to lease areas.	Comment noted.
25h	Regarding Best Management Practices, there have been several efforts to create, but they are fact-specific and location-specific and need to be refined during the CEQA process and application review, as opposed to during the preliminary public interest determination phase.	Comment noted. Also see response to 23d.

Comment No.	Summary of Comment	Response
26a	Shared high level concerns and will submit more written comments at a later date. Does not believe criteria are ready for adoption; does not address conservation concerns.	Comment noted.
26b	Requested clarification on whether the introduction would be included in the final criteria and recommended that it should be included as it is important to interpret the criteria.	Yes, the introduction will be included in the final Criteria.
26c	Believes some of the benefits included in the criteria may be false or speculative.	The Criteria identifies “potential benefits.” Whether the activities on the lease provide benefits is project specific.
26d	Some level of analysis has to be done at the public interest stage.	See response to comment 23a.
26e	Some additional impacts that need to be included in considerations.	Staff welcome additional input on considerations to include.
26f	Requests a table to show what suggestions were received and incorporated.	This document created to meet this purpose.
27a	This is an important first screening step in a lease application process. There are many steps along the way, and it seems as if some people have lost sight of that. The considerations here are similar to the pre-questions that projects applying for a lease from the State Lands Commission might go through. Many public trust values can be in competition with each other, so it’s a balancing act for each application. Many of the criteria in the second draft are consistent with the State land Commission's public trust analysis and evaluation.	Comment noted.
27b	Suggests including statements that help align with other state efforts, e.g., Aquaculture Guiding Principles.	Comment noted.

Comment No.	Summary of Comment	Response
28	Appreciative of the clarity provided today on requirements versus considerations. The current list of considerations includes some that should be considered as non-negotiables, e.g., compatibility with admin help bed, species grown, or methods known to have negative effects. Considerations that are clear no-goes should shift to requirements.	See response to comment 22b.
29a	Requested clarification on how the criteria will prioritize equity.	See Commission JEDI policy.
29b	Requested clarity on whether there was potential to create a map of areas available to lease as part of the process.	A mapping effort is not part of the public interest criteria at this time.
30a	Does not feel that the environmental concerns are sufficiently addressed.	Comment noted.
30b	There are clear constraints in the considerations that should be moved to the requirements (e.g., eelgrass).	See response to comment 24.
31a	Requested that the criteria make clear that it is important for leases to show that the benefits far outweigh the negatives in order to be considered in the public interest.	The determination represents the net effect of balancing all Considerations.
31b	Important not to rely on CEQA to address environmental issues because does not believe that CEQA is strong enough to handle. Suggests addressing environmental issues up front.	Staff respectfully disagree with the assertion that CEQA is not strong enough to handle environmental issues.
32a	Requests clarification on whether the objective is to determine whether it is the lease or the project that is in the public interest.	Both. The lease is the location where the project is proposed. The location needs the context of a project to guide the decision.
32b	Making the considerations more stringent would steer towards less efficiency and a more duplicative process in addition to CEQA.	Comment noted.
32c	No grower is interested in dodging environmental stewardship, you will have the support of growers in limiting potential impact. Believes that some of the impacts included are highly speculative.	Comment noted.

Comment No.	Summary of Comment	Response
32d	Requests that the list of impacts be condensed so they can be evaluated as either a solid yes or no.	Comment noted. A final decision regarding the public interest question does boil down to a yes or no, but the criteria is meant to highlight what goes into that decision.
32e	Requests more clarity on the pathway and process.	Comment noted. Staff aim to provide more clarity on the pathway and process in the subsequent draft following guidance from the Commission.
32f	Requests administrative efficiency and encouraged direct involvement with the State Lands Commission who is experienced in issuing leases.	Commission and CDFW staff plan to meet with CSLC staff.
33a	This is already a tough industry for new companies to break in to. Recommend keeping monopolies consideration (benefits #6) in for right now.	Comment noted. May consider for Draft 3.
33b	Requested that the document streamline the process. Agrees that the document is a good idea and disagrees with other commenters that this document is pro industry. In fact, there are aspects that make this more difficult for industry. Requests clarity on what measures are being considered to streamline process rather than adding another step to muddy the process.	Comment noted. Will make efforts to clarify which measures streamline the process and which ones may be additional steps.
33c	Would like to see a mapping tool like AOA effort by NOAA in CA state waters.	This is outside the scope of the public interest determination criteria.
33d	Requested clarification on what the Commission is going to do to help the applicant at the points in the lease application review process flow chart where there are “no’s”.	CDFW staff may help applicant recognize options to revise project plans that meet compliance requirements before bringing to Commission. This role is included in statutory duties of the State Aquaculture Coordinator (FGC 15100). May consider additional language in Draft 3 describing this stage of process.
34	Second draft does not adequately reflect comments from environmental organizations and urges a significant rewrite; appears pro industry.	Comment noted. Staff respectfully disagrees that criteria are pro-industry.

Comment No.	Summary of Comment	Response
35	Commenter has cleaned up lots of debris from aquaculture in Tomales Bay. Believes there is no oversight from CDFW on debris. Requests CDFW get house in order before issuing more leases.	Comment noted.
36a	Would like further clarity about the purpose of the criteria in general. Concerned that environmental NGOs are pushing for too many considerations assuming criteria are the first level of evaluation. If criteria are the first level, then the commenter suggests impacts and benefits should be condensed into categorical themes and not expanded upon. By making the list specific, it's creating an ultimate evaluation of the project itself rather than one step of many.	Comment noted. Staff will make efforts to clarify the purpose of the criteria and plan to discuss with the MRC about the timeline criteria should be considered.
36b	Agrees "Requirements" should be Yes/No, but that eelgrass protection should not be elevated to a Requirement since eelgrass is not confined to a boundary.	Staff agree that eelgrass protection should not be elevated to a Requirement.
36c	Believes Requirement 5 should be moved to considerations.	Comment noted. Although it reflects a statutory authority, its position may be re-evaluated in a third Draft for clarity.
36d	Should consider adding "is the applicant barred from doing business in the state of California" to the list of Requirements.	The lease agreement, which cites CA State Public Contract Code §10286 and 10286.1, excludes expatriate corporations as they are ineligible to contract with the State. There may be other instances (e.g., FTB suspended businesses) where a state water bottom lease would be inappropriate or even illegal until that status is resolved; such a factor would be part of the administrative screening upon receipt of a new lease application. Comment noted and may be considered for Draft 3.
36e	Would like further follow-up with State Lands Commission staff.	Commission and CDFW staff plan to meet with CSLC staff

Comment No.	Summary of Comment	Response
36f	Public interest is central to all decisions by the Commission and is not unique to aquaculture leasing for shellfish and seaweeds. Is concerned that there is a new process for determining whether impacts outweigh benefits or vice versa.	See response to comment 7a.
37a	Appreciates the language on monopolization.	Comment noted.
37b	Concerned about whether the criteria will streamline the permitting process or complicate it more and would like CDFW to have more direct dialogue, feedback, and development of tools to help applicants.	The goal is to clarify, not complicate the lease decision-making process. Comment noted.
37c	Emphasized that there is a lot of interest in California to become aquaculturists, yet few understand the permitting process.	Comment noted. This effort to define criteria is meant to clarify at least this step of the leasing process.
38	Second draft of criteria does not respond to conservation concerns or reflect comments from conservation organizations.	Comment noted. Please see comments 6, 8, 13, 14, 18, 22, 23, 26, 28, 30, 34, 35, and 36 for staff responses to conservation organizations.