

**California Fish and Game Commission and
California Department of Fish and Wildlife**
**Criteria and Framework for Evaluating if a
New State Water Bottom Lease is in the Public Interest**
**as approved by the Commission on August 23, 2023
September 29, 2023¹**

This document provides evaluation criteria to support a California Fish and Game Commission (Commission) public interest determination, as required by California Fish and Game Code (F&G Code) Section 15400, prior to issuing a state water bottom lease for aquaculture purposes. The criteria and evaluation framework were approved by the Commission following several workshops and conversations with agency partners, industry members, environmental non-governmental organizations, and the Commission Marine Resources Committee (MRC).

At the March 2023 MRC meeting, MRC requested that Commission staff work with the California Department of Fish and Wildlife (Department) to revise the second draft public interest determination criteria into a third and proposed final draft. MRC directed staff to restructure the draft criteria as a framework for evaluating if a lease is in the public interest as recommended by staff, develop options for the Commission public interest determination process, and bring a final proposal to the July 2023 MRC meeting for potential MRC recommendation.

At its July 2023 meeting, MRC directed Commission staff to work with various stakeholders to refine the public interest criteria based on input received during the MRC meeting, for potential approval at the August Commission meeting. This document provides the Commission-approved criteria and a high-level overview of their use within the leasing process. Figures depicting the lease process are provided in a separate document.

Overview of Public Interest Evaluation Criteria

An analysis to support a determination by the Commission of whether a state water bottom lease is in the public interest is structured around a series of criteria, divided into two categories: “Requirements”, which limit or constrain lease locations or activities by statute, regulation, or other lease entitlements, and “Considerations”, which include a suite of potential impacts or concerns, and potential benefits for the Commission to weigh in making a determination of public interest.

Requirements Criterion

Evaluation of requirements is based on a single criterion:

1. Legality under existing laws, regulations or entitlements related to aquaculture.

¹ Note: Document updated following approval to: (a) correct wording in Considerations Criteria 2 from “impingement on” to “impeding of” for consistency with statute; (b) add additional references to footnote 8 under Consideration Criteria 3 inquiries for clarity; (c) add missing word “mitigate” in footnote 8 consistent with CEQA; and (d) clarified references to the state aquaculture action plan under 1.a. and Commission coastal fishing communities policy under footnote 10 as being “once adopted.”

Evaluation of the requirements criterion is structured around a series of related inquiries that are binary in nature and, therefore, can be objectively assessed by staff.

Considerations Criteria

The considerations criteria consist of a broader list of environmental, social, economic and cultural factors that may be reasonably anticipated for consideration during the planning, evaluation, and decision-making process. The factors are divided into six criteria:

1. Compatibility with state aquaculture policy standards.
2. Social, cultural, and/or economic impeding of access for public uses or other interests, or tribal uses.
3. Degree of threat to environmental protection, ecosystem sustainability goals, and public trust values
4. Best management practices measures.
5. Potential environmental benefits.
6. Potential social, cultural, or economic benefits.

Evaluating the considerations criteria is structured around a series of related inquiries to explore the potential impacts or benefits of each unique lease application. The answers to inquiries associated with these criteria are not proposed to be used in a prescriptive way, but rather are intended to inform staff review of any lease application's specific facts and staff's associated recommendations, and the Commission's eventual discretionary determination.

Evaluating the considerations criteria requires in-depth analyses, including those conducted pursuant to California Environmental Quality Act (CEQA) review; thus, the evaluation cannot be completed prior to CEQA. Consequently, evaluating these criteria is proposed to occur after CEQA environmental and cultural analysis and supplemental social and economic analyses. However, the criteria are expected to serve as a guide in pre-application lease design and siting, and during the application process to inform public discussion and CEQA review.

Initial Review: Requirements Criteria

Following Commission receipt of a new lease application, an initial review and confirmation of lease requirements will be completed by staff to determine if lease requirements are met under a single criterion with seven corresponding inquiries.

Legality under Existing Laws and Regulations Related to Aquaculture

This criterion verifies that any location or proposed culture species or method would not be illegal under any relevant state or federal law, regulation, or legal entitlement or existing lease agreement. Information sources for evaluating this criterion include California State Lands Commission (CSLC), the Department, the Native American Heritage Commission, and the California Department of Public Health (CDPH).

Inquiries

1. Lease is located in an area that is certified by the California State Lands Commission as unencumbered and available for aquaculture use².
2. Lease area avoids areas used by the public for digging clams, as designated by CDFW³.
3. Lease is not located within designated areas or jurisdictions that prohibit aquaculture.
4. Lease is not located in an area where it will adversely impact previously identified Native American cultural resources, as identified by the Native American Heritage Commission.
5. Lease does not propose finfish aquaculture in state waters.⁴
6. Lease area is compatible with activities occurring within administrative kelp bed designations.⁵
7. *For products cultivated for human consumption only:* Lease is not sited in areas with *unresolvable* risks to public health as defined by the California Department of Public Health in compliance with the National Shellfish Sanitation Program.⁶

Recommended Actions

- If all requirements are met, the Commission will direct staff to advance the application to MRC and Tribal Committee (TC) for review and commence CEQA and an in-depth analysis, which will contribute information to support evaluation of the considerations criteria.
- If any requirements are not met, consideration of the application is concluded. An applicant may reapply if deficiencies in the requirements are addressed.
- Staff will report the outcome of the requirements evaluation at the next regularly scheduled Commission meeting. Note that if the requirements are met, advancement to MRC and TC can precede the outcome report at the next Commission meeting.

Final Review and Evaluation: Considerations Criteria

A final evaluation of lease public interest is supported by analyses conducted pursuant to CEQA and supplemental evaluation by Department staff based on six criteria and corresponding inquiries.

² Title 14 (T14), California Code of Regulations (CCR), Section 237(b)(3).

³ F&G Code Section 15401.

⁴ F&G Code Section 15400(b).

⁵ T14, CCR, Section 165.5.

⁶ This is independent from any required certificates, licenses, permits, and registrations issued by CDPH that must be pursued by an aquaculturist subsequent to lease approval.

1. Compatibility with State Aquaculture Policy Standards

This criterion considers any activities or methods that conflict with state aquaculture policy. Information sources for evaluating this criterion include the Department and other partner agencies.

Inquiries

- a. Are proposed lease activities, culture methods, and species compatible with the State aquaculture action plan (once adopted)?

2. Social, Cultural, and/or Economic Impeding of Access for Public Uses or Other Interests, or Tribal Uses

This criterion considers locations that would interfere with public access to state waters or commercial or recreational uses. Information sources for evaluating this criterion include the Department, CSLC, California Coastal Commission, United States Coast Guard, industry members, and stakeholders.

Inquiries

- a. Would the lease unreasonably impede public access to state waters, waterfronts, or fishing grounds for purposes of commercial and/or recreational fishing and harvesting, commerce, or coastal recreation, including documented high-use vessel routes, shipping lanes, or navigation channels?⁷
- b. Would the lease unreasonably impede tribal access to state waters for the purpose of exercising customary hunting, gathering, and fishing rights (e.g., as afforded by exemptions to marine protected area restrictions)?

3. Degree of Threat to Environmental Protection, Ecosystem Sustainability Goals, and Public Trust Values

This criterion considers the degree of impact of the lease (including the location, culture species, or methods) on the environment and/or the ecosystem and explores whether the lease would impede the ability of the ecosystem to function properly. Information sources for evaluating this criterion include CEQA⁸, the Department, and National Marine Fisheries Service Office of Protected Resources consultation.

Inquiries

- a. Does the lease propose use of culture methods, chemicals, feeds, or materials known to cause significant environmental degradation?

⁷ F&G Code Section [15411](#).

⁸ Note: CEQA measures to avoid, minimize, or mitigate significant impacts would be relevant to this evaluation and other inquiries reliant on CEQA review.

- b. Do lease activities 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 wildlife?⁹
- c. What is the risk that the lease would 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 levels rise, or to achieve ecological goals of overlapping or adjacent marine protected areas?⁸
- d. Is the lease sited to avoid impacts to areas within recognized sensitive habitats (including biogenic habitat such as eelgrass)?^{8,10}
- e. Is the lease sited to avoid impacts to special-status species, including species with a threatened or endangered designation-or species protected under the Marine Mammal Protection Act or Migratory Bird Treaty Act?⁸
- f. Does the lease propose culture of any non-native species not currently cultured in California waters? If so:
 - i. Are any of the non-native species documented to be invasive?
 - ii. Does the proposal demonstrate the culture practices will not be detrimental to native fish and wildlife consistent with the Commission’s Introduction of Non-Native Species Policy?¹¹

4. Best Management Practices Measures

This criterion considers methods and measures that would reduce the leases environmental impact on local species and the surrounding habitat. Information sources for evaluating this criterion include CEQA and the Department.

Inquiries

- a. Does the proposed lease include measures to:
 - i. Avoid and/or minimize the risk of marine life entanglements?
 - ii. Prevent introduction, transmission, and/or spread of invasive species, pathogens, disease, and pests?
 - iii. Prevent, minimize, clean up, and monitor marine debris?

⁹ F&G Code Section 15102 is a provision for potential Department action (generally applies after lease issuance and can be applied as an adaptive management tool at any time within a lease area). The Department currently does not have a list of pre-determined locations where an aquaculture operation or cultured species would be detrimental to adjacent native wildlife; however, if the Department formally determines these designations, this consideration inquiry should be added to the Requirement criterion. In addition, information sources for this inquiry may include determinations by other agencies.

¹⁰ Note: This inquiry can be adaptively managed as more information is released from emerging science, such as studies that indicate specific measures that avoid impacts to or support eelgrass (e.g., compatibility of specific gear types, harvesting methods, or culture depths). In the interim, the Commission generally takes a precautionary approach.

¹¹ Commission Policy on the Introduction of Non-native Species

- iv. Maintain regular inspections of infrastructure and culture activities, keep infrastructure in good repair, address any damaged or lost cultivation materials within specified time frames, and report on gear and infrastructure conditions?
- v. Meet minimum planting and harvesting requirements per acre?¹²
- vi. Account for any potential environmental or logistical challenges associated with the lease location (e.g., depth and trampling or vessel scouring of eelgrass, proximity to seabird and shorebird rookeries and avoidance of rookery habitat loss or bird disturbance, proximity to marine mammal haul-outs, proximity to river run-off or seasonal siltation events, vessel transit routes, etc.)?

5. Potential Environmental Benefits

This criterion includes any potential benefits or adaptation strategies to the local environment. Information sources for evaluating this criterion include CEQA and the Department.

Inquiries

- a. Would lease activities contribute environmental benefits, such as habitat creation, nutrient uptake or filtration, species recovery, supporting ecologically significant flora, or other ecosystem services?
- b. Would lease activities advance mitigation, adaptation strategies, and/or climate resilience such as blue carbon sequestration or reducing carbon footprint ("food miles")?
- c. Would lease activities contribute to collaborative monitoring and/or academic research efforts that enhance scientific knowledge and/or inform adaptive management?

6. Potential Social, Cultural, or Economic Benefits

This criterion includes any potential benefits that would positively affect local, regional and/or statewide communities. The information source for evaluating this criterion is the Department.

Inquiries

- a. What employment and other economic opportunity would lease activities provide to the state and surrounding community?
- b. Would lease activities provide fresh, locally-sourced product, benefiting California food security, and/or supplement wild-harvested supplies?
- c. Would lease activities help increase native fish stocks or enhance commercial and recreational fishing?

¹² T14, CCR, Section 237.

- d. Would approval of the proposed lease align with Commission goals for equitable access to leasing?¹³
- e. Would lease activities help to educate the public about aquaculture practices and/or the local environment through activities such as public tours or informational boards?
- f. Does the lease application:
 - i. Have cross-interest community support?
 - ii. Seek to align with coastal fishing community goals reflected in the Commission's policy¹⁴, including enhancing availability and stability of shoreside infrastructure?

Recommended Actions

- Request the Department evaluate the inquiries in consultation with other state, federal and tribal agencies, where relevant; highlight areas of uncertainty or unmitigated impacts; and develop a public interest recommendation.
- Deliver recommendations to MRC and TC for potential committee recommendations for Commission consideration.
- Commission consider evaluations and recommendations, along with public input, in making its public interest determination.
- If the Commission determines that the lease is in the public interest, then the application may be considered for approval.
- If the Commission does not determine that the lease is in the public interest, consideration of the application is concluded.

¹³ Includes the Commission's Policy on Justice, Equity, Diversity, and Inclusion

¹⁴ As defined in the Commission's Policy on Coastal Fishing Communities, once adopted