

Background: California Aquaculture Program

Aquaculture in California, according to information available from California Department of Fish and Wildlife (CDFW), is very diverse and includes a variety of species raised in different environments. It ranges from the raising of freshwater fish or seaweeds in tanks on land to the cultivation of oysters in bay tidelands. Many of the species raised – oysters, mussels, clams, abalone and seaweed -- are produced for high-value niche markets. For example, oysters available by mail from one aquaculturist are on the order of \$2.15 - \$3.00 each. From 2020 – 2022 there were about 110 registered aquaculturists in the state, and most commercial marine aquaculture occurs in the state's estuaries and bays. While about 5,700 acres of state water bottoms and tidelands are leased for aquaculture, estimates are that less than 10% of that area is actively cultivated.¹

Current 2023 fees for a new aquaculture permit, aquaculture renewal permit, late fee, and aquaculture surcharge are \$1,025.75, \$644, \$192.50, and \$769, respectively. The surcharge applies to aquaculturists who meet certain landing criteria in order to help support the aquaculture program at CDFW. These fees raised in aggregate about \$103,000 annually from 2020 – 2022. The raised surcharge and the relatively increased aquaculture fee rates are due to sunset on January 1, 2024. A rough calculation indicates that if these were allowed to sunset, fee revenue would decrease about 30%. Last year, SB 1392 (McGuire, Chapter 307, Statutes of 2022) extended the aquaculture surcharge and relatively increased aquaculture fees for one year only as a legislatively-mandated report examining the cost of the aquaculture program was not released in a timely manner. The report was due in February 2022, but released in August 2022.

The late aquaculture report showed a 78% shortfall in resources for the California Aquaculture Program to meet its "mission level" of service, including leasing-associated expenses. The program operates at a deficit, and collected fees, including the surcharge and relatively increased fees, do not come close to covering CDFW's and the Fish and Game Commission's actual costs. As noted in the report, the CDFW Aquaculture program "may continue to face difficulties in providing coordination, resource management, and administrative oversight."

Existing law:

- 1) Establishes CDFW and the California Fish and Game Commission (Fish and Game Commission) in the California Natural Resources Agency.

In general, the Fish and Game Commission sets regulations that CDFW implements and enforces. CDFW also provides data and expertise to inform the Fish and Game Commission's decision-making process.

- 2) Establishes the Sea Urchin Commission in state government and vests the Sea Urchin Commission with various powers and duties, including an assessment for each pound of sea urchin landed or delivered by divers to handlers in the state. (Food and Agricultural Code (FAC) §§79000 *et seq.*, §79040, §79075, §79120)

¹ Final Report to the California Fish and Game Commission, "The Status of Commercial Marine Aquaculture in California." May 2020 (corrected).

- a) The current maximum landing fee per pound of sea urchin is three-cents.
- 3) Authorizes the Sea Urchin Commission to consult and enter into agreements with the Director of the CDFW, if necessary and appropriate, to assist in the administration and enforcement of certain sea urchin provisions, such as collecting assessments. If an agreement is reached, the Sea Urchin Commission is required to reimburse the reasonable costs of CDFW. (FAC §79132)
- 4) Requires every trap or string of traps to be marked with a buoy. Requires CDFW to implement regulations by January 1, 2020, requiring standardized gear marking for those fisheries in which the department determines it is appropriate. (Fish and Game Code (FGC) §9005)
- 5) Defines "aquaculture" as a form of agriculture devoted to the propagation, cultivation, maintenance, and harvesting of aquatic plants and animals in marine, brackish, and fresh water. "Aquaculture" does not include species of ornamental marine or freshwater plants and animals not utilized for human consumption or bait purposes that are maintained in closed systems for personal, pet industry, or hobby purposes. (FGC §17)
- 6) Finds and declares, under the California Aquaculture Development Act, that it is in the interest of the people of the state that the practice of aquaculture be encouraged in order to augment food supplies, expand employment, promote economic activity, increase native fish stocks, enhance commercial and recreational fishing, and protect and better use the land and water resources of the state. (Public Resources Code §826)
- 7) Declares a statewide policy to encourage the conservation, maintenance, and utilization of the ocean and waters under the jurisdiction of the state for the benefit of the state citizenry and development of fisheries, including, among other objectives, the development of commercial aquaculture. (FGC §1700)
- 8) Requires the owner of an aquaculture facility to register certain information with CDFW by March 1 of each year, and requires CDFW to impose prescribed fees for registration and renewal. (FGC §15004, §15101)
- 9) Requires, in addition to the registration and renewal fees, a surcharge fee to be paid at the time of registration by the owner of an aquaculture facility if the gross annual sales of aquaculture products of the facility during the prior calendar year exceed \$25,000. (FGC §15103)
- 10) Imposes a penalty for delinquent payment of aquaculture fees. (FGC §15104)
- 11) Increases, until January 1, 2024, registration, renewal, surcharge, and penalty fees, as provided. (FGC §15004, §15103, §15104)
- 12) Requires CDFW to prepare and submit to the Legislature, on or before February 1, 2022, and every five years thereafter, a report regarding the aquaculture program, as provided. (FGC §15105)

- 13) Requires CDFW, at least once every five years, to analyze the fees and taxes authorized for the aquaculture program to ensure that the amount of the appropriate fee or tax is sufficient to fully fund the program. (FGC §15004)

PROPOSED LAW

This bill would increase the base fee for a sea urchin diving permit to raise revenue for the California Sea Urchin Commission, and extend the sunset on the aquaculture surcharge and related fees until January 1, 2027, among other fishery-related items. Specifically, this bill would:

- 1) Require the Fish and Game Commission to adopt regulations related to commercial sea urchin diving permits and the vessels used for commercial sea urchin diving in order to better manage the number of permits issued.
- 2) Increase the base fee for a sea urchin diving permit to \$530 from \$330. Require \$200 of the fee to be distributed by CDFW to the California Sea Urchin Commission for use in meeting its mission, as provided. Authorize the California Sea Urchin Commission to revoke the \$200 portion of the fee before February 1 of each calendar year.
- 3) Authorize the California Sea Urchin Commission to enter into an agreement with the CDFW Director for CDFW's expenses associated with the distribution of the \$200, and require reimbursement of CDFW's expenses if an agreement is established for its reasonable administrative costs, as provided.
- 4) Require CDFW to adopt regulations regarding the marking and color coding of lines used in state managed fisheries.
- 5) Extend increased registration, renewal, surcharge, and penalty fees relating to aquaculture until January 1, 2027.

ARGUMENTS IN SUPPORT

According to the author, "California takes great pride in its fishermen and all the hard work they put into boosting local economies and putting healthy, fresh food on our plates. These fishermen risk their lives every day doing their jobs in dangerous and even life-threatening conditions. It is time to promote safety, code consistency, and opportunity. The Joint Committees on Fisheries and Aquaculture works with the tens of thousands of hard-working men and women of the Golden State's seafood industry – worth \$9 billion – and advances an omnibus bill every few years to remedy issues and challenges large and small. SB 500, the Fisheries Omnibus Bill, addresses issues related to fisheries across the Golden State. This bill promotes fishermen safety by granting authority to the Fish and Game Commission to create a "John Doe" deckhand permit for the sea urchin fishery, allowing divers to have more safety personnel on board while they are vulnerable underwater. This bill also takes a first step in ending penalties against our Dungeness crab fishermen for unknown whale entanglements."

ARGUMENTS IN OPPOSITION

None received

COMMENTS***The CDFW Aquaculture Program does not generate sufficient revenues to pay for CDFW and Fish and Game Commission costs to implement the program.***

The August 2022 legislative report is very clear that the program operates at a deficit in aggregate. While the relatively increased fee structure and the surcharge provide some additional revenue, it is insufficient. Despite the opportunity – and existing requirement to do so – neither CDFW nor the Fish and Game Commission have appeared to do more than index the fees. While the August 2022 report is expressly concerned about increased fees raising barriers to entry for new potential aquaculturists, the report is not equally concerned by the costs to the state’s taxpayers to subsidize this for-profit industry that in many instances uses public trust resources. Should aquaculture expand in the state, the revenue shortfall would likely get worse.

To be sure, the recent “service-based budgeting” effort undertaken at CDFW found in 2021 that CDFW funding was inadequate to meet its “mission” service level across virtually all of its programs in aggregate. So, the Aquaculture Program is not alone in revenues being far less than ongoing costs. However, the Aquaculture Program – unlike many CDFW programs to protect fish and wildlife resources – explicitly serves businesses with the potential to generate revenue to fully cover CDFW’s and the Fish and Game Commission’s costs. While CDFW is tasked with promoting aquaculture that is not equivalent to subsidizing the aquaculture industry. In addition, personnel capacity constraints at the Fish and Game Commission and CDFW have been cited recently as an obstacle to, for example, addressing aquaculture needs (see comment below).

There may be multiple methods or combinations of methods to cover the costs of the California Aquaculture Program, including seeking business development funds from GO-Biz or restructuring fees, including lowering initial fees for new registrants. The sunset extension in SB 1392 was one year to address the late report. Given the information about the Aquaculture Program deficit in the late report once it was released, the Committee may wish to set the sunset extension at one year again to allow stakeholders to develop a plan to fully and sustainably fund the California Aquaculture Program in an ongoing manner. [Amendment 1]

The Committee may wish to direct staff to work with the author’s office on this effort, and may wish to revisit the sunset date in this bill if an adequate funding plan is developed.

Existing regulatory limits on sea urchin diving permits.

Existing regulations already seek to limit the number of permits for sea urchin diving. New diving permits are only available on a one new permit for every eleven permits retired until the permit capacity for the fishery is at 149 or fewer. (Title 14, California Code of Regulations, §120.7) From 2020 – 2022, approximately 230 commercial sea urchin permits were issued annually, so the 149 permit limit has not been achieved. The author may wish to further clarify what “better manage” with respect to the development of regulations by the Fish and Game Commission means in order to realize the goals of this provision.

The existing limit is intended to reduce crowding in prime fishing areas, and reduce the number of latent permits (those that are not fished). Only active fishers currently pay the three-cents per pound fee that helps to fund the marketing efforts of the Sea Urchin

Commission. Incorporating support for the Sea Urchin Commission into the annual fee may help to reduce latent permits.

Line marking.

Given the existing statutory deadline to promulgate regulations was used for crab traps, there is merit in clarifying CDFW's authority to require line marking across fisheries. The Dungeness Crab Task Force has recommended that all fixed-gear fisheries be required to mark their gear.

Statewide Aquaculture Action Plan under development.

The Ocean Protection Council (OPC) is currently developing a statewide Aquaculture Action Plan that will create a comprehensive, consistent, and science-based framework and policy for marine aquaculture in California. The Action Plan will focus on marine algae and shellfish in state marine waters and land-based/recirculating tank operations for marine algae, shellfish, and finfish, and is expected to be completed in 2023. The core principles that are meant to inform the Action Plan include: develop and utilize best available science; ensure aquaculture sustainability; build governance and management partnerships; ensure effective aquaculture planning; develop and implement efficient and effective aquaculture oversight; and protect public health and food safety.

Recent Fish and Game Commission action on aquaculture.

In June 2020, the Fish and Game Commission adopted a six-month hiatus on receiving new aquaculture lease applications, largely due to staffing constraints and the processing of three new recently-received applications. This hiatus was lifted in April 2021, and continuing capacity constraints were cited.

In March 2021, the Fish and Game Commission began a process – through its Marine Resources Committee – to develop public interest criteria for new aquaculture leases. In order for the Fish and Game Commission to issue a new aquaculture lease of state water bottom, it must find that it is in the public interest (FGC §15400). Discussions continue, including at what point in the process of approval the public interest determination should be made.

Recent aquaculture efforts by the California Coastal Commission.

The California Coastal Commission (Coastal Commission) in the last few years identified numerous permitting and Coastal Act compliance issues related to marine aquaculture statewide. In some instances, the same operator repeatedly violated lease terms. Significant progress resolving these issues has been made through the Coastal Commission's issuance of new and amended permits, and almost all of the new and revised permits were approved unanimously by the Coastal Commission via its consent calendar.

In December 2020, the Coastal Commission published its Coastal Development Permit Application Guidance for Aquaculture and Marine Restoration. The guidance is intended to help applicants more effectively navigate the coastal development permit application process. The guidance was required by SB 262 (McGuire, Chapter 472, Statutes of 2019).

Recent related legislation

SB 1392 (McGuire, Chapter 307, Statutes of 2022) extended the sunset for the aquaculture surcharge for one year.

AB 303 (R. Rivas, 2021) would have established an alternative regulatory process for mariculture projects cultivating specified species of oyster, mussel, clam, and kelp within five 200-hectare tracts designated by the CDFW for 12 years. (*This bill was held without hearing in the Assembly Natural Resources Committee.*)

SB 262 (McGuire, Chapter 472, Statutes of 2019) requires the Coastal Commission to develop guidance for applicants for coastal development permits for shellfish, seaweed, and other low-trophic mariculture production and restoration, among other things.

SB 1309 (McGuire, Chapter 985, Statutes of 2018) revised the existing Dungeness crab trap retrieval program, and required the Dungeness Crab Fishing Gear Working Group to evaluate risks of marine life entanglements, among other things.

SB 809 (Senate Natural Resources and Water Committee, Chapter 521, Statutes of 2017) extended the increased aquaculture surcharge, registration, renewal, and penalty base fees until January 1, 2023, and required a report from CDFW by February 1, 2022, among other provisions.

AJR 43 (Chesbro, Resolution Chapter 123, Statutes of 2014) states that the Legislature supports ensuring a clean and healthy marine environment to protect existing shellfish beds and access to additional acreage for shellfish farming and restoration, and further supports a dialogue between industry, environmental, and federal and state agency leaders to develop an improved permitting process that is efficient and economical for both shellfish restoration and commercial farming.

AB 1886 (Chesbro, Chapter 301, Statutes of 2012) increased the registration, renewal, surcharge and penalty base fees for aquaculture facilities and expanded the duties of the aquaculture program coordinator position within CDFW.

SUGGESTED AMENDMENTS**AMENDMENT 1**

Change the sunset date extension for the aquaculture surcharge and elevated fees to one year.

SUPPORT

California Aquaculture Association
California Fisheries and Seafood Institute
California Sea Urchin Commission
The Nature Conservancy

OPPOSITION

None received