

Sustainable Oceans: Aquaculture and Finfishing

This Act regulates finfish aquaculture locations based on various impacts to water quality, the marine ecosystem and wild fish. The Act directs the state department of fish and game to develop an environmental impact report about coastal marine finfish aquaculture projects. That report will provide a framework for managing marine finfish aquaculture in a sustainable manner that considers environmental impacts. The Act prohibits engaging in marine finfish aquaculture in state waters without a lease. It establishes terms for such leases.

Submitted as:
California
Chapter 36 of 2006
Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act is entitled “The Sustainable Oceans Act.”

2

3 Section 2. [*Legislative Findings.*]

4 (a) The Legislature finds and declares that salt water or brackish water aquaculture is a
5 coastal-dependent use which should be encouraged to augment food supplies.

6 (b) The [Department of Fish and Game] may identify coastal sites it determines to be
7 appropriate for aquaculture facilities. If the [department] identifies these sites, it shall transmit
8 information identifying the sites to the [state environmental quality commission] and any relevant
9 local government agency. The [commission], and where appropriate, local governments, shall
10 provide for as many coastal sites identified by the [Department of Fish and Game] for any uses
11 that are consistent with this Act.

12 (c) Any agency of the state owning or managing land in the coastal zone for public
13 purposes shall be an active participant in the selection of suitable sites for aquaculture facilities
14 and shall make the land available for use in aquaculture when feasible and consistent with other
15 policies of this Act and other provisions of law.

16

17 Section 3. [*Definitions.*] As used in this Act, “Marine Finfish Aquaculture” means the
18 propagation, cultivation, or maintenance of finfish species in the waters of the [Pacific Ocean]
19 that are regulated by this state.

20

21 Section 4. [*Environmental Impact Reports for Existing and Potential Commercial*
22 *Aquaculture Operations.*]

23 (a) The [department] shall, in consultation with an [aquaculture development committee],
24 prepare programmatic environmental impact reports for existing and potential commercial
25 aquaculture operations in both coastal and inland areas of the state if both of the following
26 conditions are met:

27 (1) Funds are appropriated to the [department] for this purpose.

28 (2) Matching funds are provided by the aquaculture industry. For the purpose of
29 this section, “matching funds” include, but are not limited to, any funds expended by the
30 aquaculture industry before [insert date], for the preparation of a programmatic environmental
31 impact report.

32 (b) If a final programmatic environmental impact report is prepared pursuant to
33 subdivision (a) for coastal marine finfish aquaculture projects and approved by a [state
34 environmental quality commission] established by [insert citation], the report shall provide a
35 framework for managing marine finfish aquaculture in an environmentally sustainable manner
36 that, at a minimum, adequately considers all of the following factors:

37 (1) Appropriate areas for siting marine finfish aquaculture operations to avoid
38 adverse impacts, and minimize any unavoidable impacts, on user groups, public trust values, and
39 the marine environment.

40 (2) The effects on sensitive, ocean and coastal habitats.

41 (3) The effects on marine ecosystems, commercial and recreational fishing, and
42 other important ocean uses.

43 (4) The effects on other plant and animal species, especially species protected or
44 recovering under state and federal law.

45 (5) The effects of the use of chemical and biological products and pollutants and
46 nutrient wastes on human health and the marine environment.

47 (6) The effects of interactions with marine mammals and birds.

48 (7) The cumulative effects of a number of similar finfish aquaculture projects on
49 the ability of the marine environment to support ecologically significant flora and fauna.

50 (8) The effects of feed, fish meal, and fish oil on marine ecosystems.

51 (9) The effects of escaped fish on wild fish stocks and the marine environment.

52 (10) The design of facilities and farming practices so as to avoid adverse
53 environmental impacts, and to minimize any unavoidable impacts.

54
55 Section 5. [*Authority and Requirements for Leasing State Water Bottoms or Water*
56 *Column.*]

57 (a) Except as prohibited by [insert citation], the [commission] may lease state water
58 bottoms or the water column to any person for aquaculture, including, but not limited to, marine
59 finfish aquaculture. Upon appropriation of funds for that purpose, or if funds are otherwise
60 available, the [commission] shall adopt regulations governing the terms of the leases, after
61 consulting with affected stakeholders in a public process. No state leases shall be issued, unless
62 the [commission] determines that the lease is in the public interest in a public hearing conducted
63 in a fair and transparent manner, with notice and comment, in accordance with [commission]
64 procedures. Leases issued, and regulations adopted, pursuant to this section, shall not be
65 construed to be fishery management plans.

66 (b) A person shall not engage in marine finfish aquaculture in ocean waters within the
67 jurisdiction of the state without a lease from the [commission]. Leases and regulations adopted by
68 the [commission] for marine finfish aquaculture shall meet, but are not limited to, all of the
69 following standards:

70 (1) The lease site is considered appropriate for marine finfish aquaculture in the
71 programmatic environmental impact report if prepared and approved by the [commission].

72 (2) A lease shall not unreasonably interfere with fishing or other uses or public
73 trust values, unreasonably disrupt wildlife and marine habitats, or unreasonably harm the ability
74 of the marine environment to support ecologically significant flora and fauna. A lease shall not
75 have significant adverse cumulative impacts.

76 (3) To reduce adverse effects on global ocean ecosystems, the use of fish meal
77 and fish oil shall be minimized. Where feasible, alternatives to fish meal and fish oil, or fish meal
78 and fish oil made from seafood harvesting byproducts, shall be used, taking into account factors
79 that include, but need not be limited to, the nutritional needs of the fish being raised and the
80 availability of alternative ingredients.

81 (4) Lessees shall establish best management practices, approved by the
82 [commission], for each lease site. Approved best management practices shall include a regular
83 monitoring, reporting, and site inspection program that requires at least [annual] monitoring of
84 lease sites to ensure that the operations are in compliance with best management practices related
85 to fish disease, escapement, and environmental stewardship, and that operations are meeting the
86 requirements of this section. The [commission] may remove fish stocks, close facilities, or
87 terminate the lease if it finds that the lessee is not in compliance with best management practices,
88 that the lessee's activities have damaged or are damaging the marine environment, or that the
89 lessee is not in compliance with this section. The [commission] shall take immediate remedial
90 action to avoid or eliminate significant damage, or the threat of significant damage, to the marine
91 environment.

92 (5) Before issuance of the lease, the lessee shall provide baseline benthic habitat
93 and community assessments of the proposed lease site to the applicable [regional water quality
94 control board] or the [state water resources control board], and shall monitor the benthic habitat
95 and community during the operation of the lease in a manner determined by the [regional board]
96 or the [state water resources control board]. The [regional board] and the [state water resources
97 control board] may establish and impose reasonable permit fees to pay for the costs of
98 administering and conducting the assessment and monitoring program.

99 (6) Finfish numbers and density shall be limited to what can be safely raised while
100 protecting the marine environment, as specified by the terms of the lease, subject to review and
101 amendment by the [commission].

102 (7) The use of all drugs, chemicals, and antibiotics, and amounts used and applied,
103 shall be minimized. All drugs, therapeutic substances, and antibiotics shall be used and applied
104 only as approved by the United States Food and Drug Administration for marine finfish
105 aquaculture. The lessee shall report that use and application to the [commission] on a regular
106 schedule, as determined by the [commission], but no less than [annually], that shall be included in
107 the terms of the lease. The [commission] shall review those reports on a regular basis and at least
108 [annually].

109 (8) The [commission] shall require all farmed fish to be marked, tagged, or
110 otherwise identified as belonging to the lessee in a manner determined appropriate by the
111 [commission], unless the [commission] determines that identifying farmed fish is unnecessary for
112 protecting wild fish stocks, the marine environment, or other ocean uses.

113 (9) All facilities and operations shall be designed to prevent the escape of farmed
114 fish into the marine environment and to withstand severe weather conditions and marine
115 accidents. The lessee shall maintain records on all escapes in a manner determined by the
116 [commission]. In the event of more than de minimis escapement, the number of escaped fish and
117 the circumstances surrounding the incident shall be reported immediately to the [commission],
118 and the lessee shall be responsible for damages to the marine environment caused by those
119 escaped fish, as determined by the [commission].

120 (10) The lessee shall, at a minimum, meet all applicable requirements imposed by
121 the [state water resources control board] and [regional water quality control boards], and shall
122 prevent discharges to the maximum extent possible. Monitoring and testing of water quality shall
123 be required on a regular basis as deemed appropriate by the [state water resources control board]
124 or [regional water quality control boards]. All inspection and monitoring reports and other
125 records, and all data on the discharge of chemical and biological pollutants shall be kept on file
126 and available for public review.

127 (c) If a restoration or enhancement plan is submitted to, and approved by, the
128 [commission], and that plan, among other things, provides for monitoring and protecting the
129 benthic habitat, the prevention of pollution, and the prevention of adverse impacts on wild fish

130 stocks from disease, parasites, and genetic alterations, subdivision (b) shall not apply to any of the
131 following:

132 (1) Artificial propagation, rearing, and stocking projects for the purpose of
133 recovery, restoration, or enhancement of native fish stocks carried out under either of the
134 following:

135 (A) A scientific collecting or research permit issued by the [department].

136 (B) The state [ocean resources enhancement and hatchery program], as set
137 forth in [insert citation], for the enhancement of white sea bass.

138 (2) Nonprofit hatcheries and nonprofit artificial propagation projects operated by,
139 or on behalf of, licensed commercial or sport fishermen and fisherwomen for the purpose of
140 recovery, restoration, or enhancement of the state's native marine fish populations, pursuant to
141 [insert citation].

142 (d) Nothing in this section shall be construed to limit or expand the application of any
143 other state law or regulation pertaining to marine finfish aquaculture conducted within the ocean
144 waters under the jurisdiction of this state.

145

146 Section 6. [*Maximum Terms for State Water Bottom Leases.*]

147 (a) Except as specified in subdivision (b), no initial term of a state water bottom lease
148 shall exceed [25] years.

149 (b) The initial term of a state water bottom lease for marine finfish aquaculture shall not
150 exceed [10] years.

151

152 Section 7. [*Renewing State Water Bottom Leases.*]

153 (a) Each state water bottom lease shall specify a period prior to expiration when renewal
154 of the lease may be requested by the lessee. If during this period the lessee is still actively
155 engaged in aquaculture, as determined by the [commission], the lessee shall have a prior right to
156 renew the lease on terms agreed upon between the [commission] and the lessee. If terms are not
157 agreed upon, the [commission] shall advertise for bids on the lease. If a request for renewal is not
158 made by the lessee, the [commission] shall advertise for bids on the lease. The [commission] shall
159 consider bids only from aquaculturists registered pursuant to [insert citation].

160 (b) Notwithstanding subdivision (a), with respect to any lease of state water bottoms in
161 effect on [January 1, 1983], the lessee shall have a prior right to renew the lease. If the lessee does
162 not renew the lease, the [commission] shall advertise for bids on the lease. The [commission]
163 shall consider bids only from aquaculturists registered pursuant to [insert citation].

164 (c) Except as specified in subdivision (d), a lease may be renewed for additional periods
165 not to exceed [25] years each.

166 (d) A lease for marine finfish aquaculture may be renewed for additional periods not to
167 exceed [five years] each.

168

169 Section 8. [*State Water Bottom Lease Fees.*]

170 (a) Except as specified in subdivision (b), the [commission] shall award water bottom
171 leases to the highest responsible bidder, if the bid meets or exceeds the minimum annual rent
172 established by the [commission], which shall not be less than [two dollars (\$2)] per acre, for all
173 species cultivated, unless the acreage applied for is [10 acres or less], in which case the minimum
174 acceptable rent shall be [ten dollars (\$10)] per acre. The [annual] rent for any lease in effect on
175 [January 1, 1983], for the cultivation of oysters shall be [one dollar (\$1)] per acre until the
176 expiration thereof. The [commission] may reject any or all bids for the lease of state water
177 bottoms if it deems the rejection to be in the public interest.

178 (b) Fees for marine finfish aquaculture leases shall, at a minimum, be sufficient to pay for
179 the costs of administering the marine finfish leasing program, and for monitoring and enforcing
180 the terms of the leases.

181

182 Section 9. [*Restoring Aquaculture Sites After a Site Lease Terminates.*]

183 (a) Upon termination of a lease, for any reason, all structures shall be removed at the
184 lessee's expense from the leasehold, and the area shall be restored to its original condition. If the
185 lessee fails to remove the structures, the state may remove them and the lessee shall pay the
186 removal costs incurred.

187 (b) The [commission] shall require financial assurances of each marine finfish
188 aquaculture lessee to ensure that restoration is performed to the satisfaction of the [commission].
189 Financial assurances may take the form of surety bonds executed by an admitted surety insurer,
190 irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the
191 [commission], as it determines are available and adequate to ensure the lease site is restored
192 pursuant to this section.

193 (c) Marine finfish aquaculture lessees shall be responsible for any damages caused by
194 their operations, as determined by the [commission], including, but not limited to, reimbursement
195 for any costs for natural resource damage assessment.

196 (d) Nothing in this section limits the state in pursuing additional remedies authorized by
197 law.

198 (e) The state [fish and game commission] and [insert agency] are the principal state
199 agencies responsible for the establishment and control of wildlife and fishery management
200 programs and the [commission] shall not establish or impose any controls with respect thereto
201 that duplicate or exceed regulatory controls established by these agencies pursuant to specific
202 statutory requirements or authorization.

203

204 Section 10. [*Severability.*] [Insert severability clause.]

205

206 Section 11. [*Repealer.*] [Insert repealer clause.]

207

208 Section 12. [*Effective Date.*] [Insert effective date.]