

FISH AND GAME CODE - FGC

DIVISION 12. AQUACULTURE [15000 - 15703]

(Division 12 added by Stats. 1982, Ch. 1486, Sec. 25.)

CHAPTER 5. Leasing of State Water Bottoms [15400 - 15415]

(Chapter 5 added by Stats. 1982, Ch. 1486, Sec. 25.)

15400.

(a) Except as prohibited by Section 15007, the commission may lease state water bottoms or the water column to any person for aquaculture, including, but not limited to, marine finfish aquaculture. Upon appropriation of funds for that purpose, or if funds are otherwise available, the commission shall adopt regulations governing the terms of the leases, after consulting with affected stakeholders in a public process. No state leases shall be issued, unless the commission determines that the lease is in the public interest in a public hearing conducted in a fair and transparent manner, with notice and comment, in accordance with commission procedures. Leases issued, and regulations adopted, pursuant to this section shall not be construed to be fishery management plans.

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

(1) The lease site is considered appropriate for marine finfish aquaculture in the programmatic environmental impact report if prepared and approved by the commission pursuant to Section 15008.

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

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

(4) Lessees shall establish best management practices, approved by the commission, for each lease site. Approved best management practices shall

include a regular monitoring, reporting, and site inspection program that requires at least annual monitoring of lease sites to ensure that the operations are in compliance with best management practices related to fish disease, escapement, and environmental stewardship, and that operations are meeting the requirements of this section. The commission may remove fish stocks, close facilities, or terminate the lease if it finds that the lessee is not in compliance with best management practices, that the lessee's activities have damaged or are damaging the marine environment, or that the lessee is not in compliance with this section. The commission shall take immediate remedial action to avoid or eliminate significant damage, or the threat of significant damage, to the marine environment.

(5) Before issuance of the lease, the lessee shall provide baseline benthic habitat and community assessments of the proposed lease site to the applicable regional water quality control board or the State Water Resources Control Board, and shall monitor the benthic habitat and community during the operation of the lease in a manner determined by the regional board or the State Water Resources Control Board. The regional board and the State Water Resources Control Board may establish and impose reasonable permit fees to pay for the costs of administering and conducting the assessment and monitoring program.

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

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

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

(9) All facilities and operations shall be designed to prevent the escape of farmed fish into the marine environment and to withstand severe weather conditions and marine accidents. The lessee shall maintain records on all escapes in a manner determined by the commission. In the event of more than de minimis escapement, the number of escaped fish and the circumstances surrounding the incident shall be reported immediately to the commission, and the lessee shall be

responsible for damages to the marine environment caused by those escaped fish, as determined by the commission.

(10) The lessee shall, at a minimum, meet all applicable requirements imposed by the State Water Resources Control Board and the regional water quality control boards, and shall prevent discharges to the maximum extent possible. Monitoring and testing of water quality shall be required on a regular basis as deemed appropriate by the State Water Resources Control Board or the regional water quality control boards. All inspection and monitoring reports and other records, and all data on the discharge of chemical and biological pollutants shall be kept on file and available for public review.

(c) If a restoration or enhancement plan is submitted to, and approved by, the commission, and that plan, among other things, provides for monitoring and protecting the benthic habitat, the prevention of pollution, and the prevention of adverse impacts on wild fish stocks from disease, parasites, and genetic alterations, subdivision (b) shall not apply to any of the following:

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

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

(B) The California Ocean Resources Enhancement and Hatchery Program, as set forth in Article 8 (commencing with Section 6590) of Chapter 5 of Part 1 of Division 6, for the enhancement of white sea bass.

(2) Nonprofit hatcheries and nonprofit artificial propagation projects operated by, or on behalf of, licensed commercial or sport fishermen and fisherwomen for the purpose of recovery, restoration, or enhancement of California's native marine fish populations, pursuant to Chapter 8 (commencing with Section 6900) of Part 1 of Division 6.

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

(Amended by Stats. 2006, Ch. 36, Sec. 4. Effective January 1, 2007.)

15401.

Areas used by the public for digging clams shall not be leased. The department shall designate those areas.

(Added by Stats. 1982, Ch. 1486, Sec. 25.)

15402.

A lessee of a state water bottom owns all lawfully cultivated organisms that are described in the application for the lease and produced in the area leased. The lessee has the exclusive right to cultivate and harvest the aquatic organisms in the area leased.

(Amended by Stats. 1983, Ch. 131, Sec. 21. Effective June 27, 1983.)

15403.

Persons wishing to lease a state water bottom shall make a written application to the commission. An application shall contain all of the following information:

(a) A map showing the area to be leased, its general vicinity, and all ownership and boundary lines in the vicinity.

(b) A description of the organisms to be grown and the culture techniques to be used.

(c) An estimate of the acreage to be leased.

(d) A nonrefundable filing fee of five hundred dollars (\$500).

The lessee shall assume responsibility for any infringement on privately owned water bottoms, or water bottoms owned by, or under the jurisdiction of any city, county, or district.

(Amended by Stats. 1990, Ch. 1706, Sec. 18.)

15404.

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

(b) The commission shall have legal notices published in a newspaper of general circulation in each county where the water bottom, or any part thereof, is located, describing the area to be leased and the type of operation to be conducted. The publication shall comply with Sections 6060 and 6066 of the Government Code.

(Added by Stats. 1982, Ch. 1486, Sec. 25.)

15405.

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

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

(Amended by Stats. 2006, Ch. 36, Sec. 5. Effective January 1, 2007.)

15406.

(a) Each state water bottom lease shall specify a period prior to expiration when renewal of the lease may be requested by the lessee. If during this period the lessee is still actively engaged in aquaculture, as determined by the commission, the lessee shall have a prior right to renew the lease on terms agreed upon between the commission and the lessee. If terms are not agreed upon, the commission shall advertise for bids on the lease. If a request for renewal is not made by the lessee, the commission shall advertise for bids on the lease. The commission shall consider bids only from aquaculturists registered pursuant to Section 15101.

(b) Notwithstanding subdivision (a), with respect to any lease of state water bottoms in effect on January 1, 1983, the lessee shall have a prior right to renew the lease. If the lessee does not renew the lease, the commission shall advertise for bids on the lease. The commission shall consider bids only from aquaculturists registered pursuant to Section 15101.

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

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

(Amended by Stats. 2006, Ch. 36, Sec. 6. Effective January 1, 2007.)

15406.5.

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

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

(Amended by Stats. 2006, Ch. 36, Sec. 7. Effective January 1, 2007.)

15406.7.

(a) In addition to the rent provided in Section 15406.5, every person operating under an oyster lease shall pay a privilege tax of four cents (\$0.04) per packed gallon, or fraction thereof, of shucked oysters harvested by the lessee.

(b) If the oysters are marketed in the shell, the tax shall be based on the equivalent yield of shucked oyster meat. In determining the yield of oysters, it shall be deemed that 100 oysters are equivalent to one packed gallon of shucked oyster meat.

(c) The tax imposed by this section is the exclusive privilege tax that shall be imposed on lessees of state water bottoms for oyster cultivation, notwithstanding subdivision (a) of Section 15003.

(Amended by Stats. 1992, Ch. 701, Sec. 48. Effective September 15, 1992. Operative January 1, 1993, by Sec. 72 of Ch. 701.)

15407.

The annual rent shall be paid to the department within 30 days of the commencement of the lease and within 30 days of the anniversary thereof. The commission may establish penalty fees for late payment and may cancel the lease if rent is not paid within 90 days of the commencement of the lease or within 90 days of any anniversary thereof.

(Amended by Stats. 1983, Ch. 131, Sec. 27. Effective June 27, 1983.)

15408.

The commission shall promulgate regulations governing the termination of leases due to failure to pay rent or improper use of the leasehold.

(Added by Stats. 1982, Ch. 1486, Sec. 25.)

15409.

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

(b) The commission shall require financial assurances of each marine finfish aquaculture lessee to ensure that restoration is performed to the satisfaction of the commission. Financial assurances may take the form of surety bonds

executed by an admitted surety insurer, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the commission, as it determines are available and adequate to ensure the lease site is restored pursuant to this section.

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

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

(Amended by Stats. 2006, Ch. 36, Sec. 8. Effective January 1, 2007.)

15410.

All leases shall be subject to the power of the Legislature to increase or decrease the rents, fees, taxes, and other charges relating to the lease, but no increase in rent shall be applicable to an existing lease until it is renewed.

(Amended by Stats. 1983, Ch. 131, Sec. 28. Effective June 27, 1983.)

15411.

Lessees under a state water bottom lease may not unreasonably impede public access to state waters for purpose of fishing, navigation, commerce, or recreation. The lessee may, however, limit public access to the extent necessary to avoid damage to the leasehold and the aquatic life culture therein.

The commission may prohibit any recreational activity in any aquaculture area subject to a state water bottom lease if it determines that the activity is detrimental to the enhancement of the resource.

(Added by Stats. 1982, Ch. 1486, Sec. 25.)

15412.

No water bottom lease may be assigned without the prior approval of the commission. Application for approval of a lease assignment shall comply with all of the requirements for an original lease.

(Added by Stats. 1982, Ch. 1486, Sec. 25.)

15413.

No person may enter upon any area subject to a water bottom lease in which aquatic life is cultivated, or remove the aquatic life therefrom without the consent of the lessee, or willfully destroy the cultivated aquatic life or any markers intended to designate the boundaries and limits of the leased area.

(Added by Stats. 1982, Ch. 1486, Sec. 25.)

15414.

A water bottom lease may require periodic reports that the commission deems necessary for the proper administration of the state's water bottoms.

(Added by Stats. 1982, Ch. 1486, Sec. 25.)

15415.

The department shall notify the State Lands Commission of all applications for water bottom leases.

The department shall inform the State Lands Commission of all leases executed, renewed, or assigned pursuant to this chapter, and shall furnish the State Lands Commission with such information concerning these leases that it may require.

(Added by Stats. 1982, Ch. 1486, Sec. 25.)