November 2, 2018

California Fish and Game Commission  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  

Via Electronic Mail to: fgc@fgc.ca.gov

Re: Marine Resources Committee Agenda Item 6 (Shellfish aquaculture best management practices (BMPs))

Dear Commissioners,

The Environmental Action Committee of West Marin (EAC) has been working to protect and sustain the unique lands, waters, and biodiversity of West Marin since 1971. We are particularly focused on Tomales Bay, a significant international coastal estuary that supports substantial bird, fish, and marine mammal populations. In the face of more severe storms, sea level rise, and ocean acidification, the important ecological and economically viable Tomales Bay must be afforded the highest level of protection and oversight.

EAC has advocated to the Fish and Game Commission (Commission) for shellfish aquaculture best management practices (BMPs) since 2015 by providing testimony at hearings, participating in stakeholder meetings, and submitting written comments including suggested BMPs. We support the Commission’s action to undertake a formal BMP rulemaking process, which is also supported by the Ocean Protection Council’s 2018 California Ocean Litter Prevention Strategy.
November 2, 2018
EAC Comments re. MRC Agenda Item 6 (BMPs)

In this letter, we include a request for extension of comments, our overall support for the document *Proposed Requirements for Shellfish Aquaculture Lease Best Management Practices (BMP) Plans Regulation* (October 24th Proposed BMPs), suggested revisions to the October 24th Proposed BMPs, and additional concerns not addressed in the October 24th Proposed BMPs.

**Request for an Extension for Submission of Comments**

As an initial comment, we were disappointed that the October 24th Proposed BMPs were distributed after business hours the day before the October 25th stakeholder meeting (October 25th meeting). Due to the late circulation of this document, the public had very limited time to review the document prior to the meeting and to participate in informed decision making. We worked diligently to submit these comments in advance of the comment deadline. However, we respectfully request an extension on the only seven-day public comment period for the general public including our constituents to have adequate time to voice their comments and concerns on this important issue.

**Support for the October 24th Proposed BMPs**

Overall, the October 24th Proposed BMPs provide a good synthesis of the BMPs and environmental concerns, which have been presented in the past. We are supportive of most of the draft requirements for site BMP plans as outlined in the October 24th Proposed BMPs. Below we present a few suggested revisions and additions to the proposed language.

**Suggested Revisions to the October 24th Proposed BMPs**

We have a few suggested revisions regarding the October 24th Proposed BMPs, which I have referenced under each section where applicable.

(a) *Reduce Litter, Marine Debris and Plastic Pollution*

The section on reduction of litter, marine debris, and plastic pollution is critical. Many of the BMPs EAC has advocated for include a focus on marine debris reduction. At the October 25th meeting, Susan Ashcraft, Commission Marine Advisor, talked about the growing problem of microplastics:

> There is a heightened awareness globally and in California of the problem of microplastics of broken down…for floating gear anything that is floating is more likely to break down over time, and we’re seeing some measurable consequences, a lot of measurable consequences from that.¹

¹ Quotes and references to the October 25th meeting are based on audio files provided by Richard James, who attended the meeting, as well as from my meeting notes. I understand that the Commission and/or Department of Fish and Wildlife (Department) also recorded the meeting, but that audio recording is not yet available to the public.
November 2, 2018
EAC Comments re. MRC Agenda Item 6 (BMPs)

In addition to the problems of lost gear from routine operations, the current escrow accounts are woefully outdated, underfunded, and in need of revision, leaving Tomales Bay at risk of legacy debris issues. While not directly related to BMPs, we recommend that the process of updating the escrow system continues with third party appraisals of cleanup costs.

Some blanks were included in the October 24th Proposed BMPs document, and we have included suggested language where applicable.

**Regarding maintenance of gear in (a)2.ii.1.,** as supported by Miranda Ries, Director of Regulatory Affairs with Pacific Seafoods, at the October 25th meeting, we also recommend “Operators perform gear maintenance assessments on a quarterly basis and after any major storm event.” Additional clarity could be added regarding what is meant by “gear assessments.”

**Regarding recovery of gear and the method to track that recovery in (a)3.i.,** we recommend including date, type of gear collected, and general location of gear collected with the goal being to continually reduce the volume of lost gear. Individual growers could use different methods like forms or photographs to track this data. The presentation by Daniel of Hog Island Oyster Company at the October 25th meeting and the handout entitled *Tomales Bay Growers Marine Debris Collection* is a useful example of tracking recovered gear by year, as well as the type of gear collected. Additional detail could be included in documents like this one regarding the approximate location of the gear collected and the entity responsible for the lost gear where the gear is marked. It would also be helpful to track the number of clean up events per year.

**Regarding gear marking in (a)3.ii.(1)i.,** we recommend that the following types of gear be marked at a minimum: all floating gear, single grow out bags, loose bags, bottom bags, bags on long lines, SEAPA oyster baskets, and any similar type(s) of gear used in future cultivation techniques not currently authorized. We note that where possible the method of gear marking should avoid the addition of more plastic which is prone to degrade or come dislodged. Where economically feasible and where it will reduce marine debris, we recommend marking of all gear. There are extensive examples of gear marking including the commercial fishing industry, Florida’s aquaculture industry, Washington’s aquaculture industry, and through the Coastal Commission’s Coastal Development Permit (CDP) conditions including Coast Seafoods and Marin Oyster Company Inc.’s permits. Marking allows anyone to contact the grower if the gear

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2 Note these terms may need revision, but our goal in suggesting these types of gear is to target the types of gear, which are most likely to escape, especially with wind and wave conditions.

3 See Florida Division of Aquaculture, *Shellfish Aquaculture Gear Management, Technical Bulletin #10*, October 2018, page 2: “The leaseholder’s identification information shall be attached to all floating or off-bottom culturing structures.”

4 See U.S. Army Corps of Engineers, Seattle District, *Programmatic Biological Assessment Shellfish Activities in Washington State Inland Marine Waters U.S. Army Corps of Engineers Regulatory Program*, October 2015, page 51, number 18, available at: https://www.nws.usace.army.mil/Portals/27/docs/regulatory/160907/Shellfish%20PBA_%20Oct30_2015_final.pdf: “All tubes, mesh bags and area nets shall be clearly, indelibly, and permanently marked to identify the permittee name and contact information (e.g., telephone number, email address, mailing address). On the nets, identification markers shall be placed with a minimum of one identification marker for each 50 feet of net.”
gets away and provides for an additional layer of accountability to improve environmental stewardship.

(d) *BMP Commitment, Compliance and Verification*

**Regarding inspections by third parties (d).2.ii.,** we recommend inspections at least twice per year. One of the inspections should be following the storm season. It would be preferable that these inspections not be scheduled. Unscheduled inspections are preferable, because they reflect regular operations rather than extra tidy operations. Miranda Ries, Director of Regulatory Affairs with Pacific Seafoods, pointed out at the October 25th meeting, where third-party inspections are scheduled, the grower has time to clean up before the inspection takes place making these inspections less accurate and valuable. Another option, which we support, in lieu of or in addition to third-party inspections, would be inspections by the regulatory agencies including the Commission, the Department, and/or the Coastal Commission.

The Commission and Department have stated there is a lack of resources, staffing, and funding for even annual Commission or Department inspections. EAC supports local grower involvement to improve regulatory oversight and is supportive of suggestions raised at the October 25th meeting that the growers could assist with raising the funds (i.e. through raised fees per Randy Lovell, Department State Aquaculture Coordinator) needed to ensure regulatory compliance and environmental stewardship. This suggestion is supported by some of the growers who spoke at the October 25th meeting stating that it there is a necessary relationship between the landlord (Commission) and tenant (lease holder) to ensure that public trust waters are being managed in a responsible manner.

Grower and regulatory collaboration could improve trust in the management of public waters and assist with finding funding to ensure lease compliance. In addition, the overall lack of regulatory presence on Tomales Bay needs to be improved. It is EAC’s understanding that regulators do not have regular access to a boat for inspections. Without access to a boat to monitor leases, there is no way to validate site conditions or ensure that BMP plans are being implemented.

**Additional Concerns Not Addressed in the October 24th Proposed BMPS**

The October 24th Proposed BMP requirements did not address some concerns with loose bags and shells or other debris that should to be considered, which I have listed below:

**Request addition to (a) i.i. that references securing gear:** When tossing out loose bags or bundles of lightweight seed bags, growers shall ensure all bags or bundles are either heavy enough to not to drift away or are secured or anchored to prevent drifting or movement. All loose bags that might drift shall be secured as soon as possible, but at a minimum within two weeks of being tossed out.

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5 The Commission and Department also lack funding for legacy clean up expenses (i.e. underfunded escrow accounts), as well as for enforcement. Adequate funding is needed for oversight and enforcement, as well as legacy clean up where and when it is needed.
Request addition to (b)(1): Growers shall not dump shells, lumber, bags or other debris on the bay floor.

Any debris placed on the bay floor causes harm to the benthic environment and should be avoided.

Additions Regarding the BMP Plan Review Process

At the October 25th meeting, Susan Ashcraft provided clarification on the review process for the BMP plans. We are supportive of the following, which should be included in the next written iteration of BMPs for the public’s review and feedback:

- BMP plans should be reviewable by the public through the Commission process.
- BMP plans should be reviewed a least every five years.

We are also supportive of the Coastal Commission’s approach to improving management practices through conditions in CDPs.

Conclusion

We thank you for your continued efforts on this critical issue that will help to ensure lasting protection for our public waters and wildlife habitats. In closing, EAC appreciates the opportunity to comment and continue our participation in a transparent public process with future adequate notice periods around this rulemaking to ensure public participation for protection of our public trust resources. It is our understanding that the Commission will continue to work collaboratively with all interested stakeholders to develop model BMP regulations so that Tomales Bay and California can lead in environmentally sustainable aquaculture.

Sincerely,

Morgan Patton
Executive Director

Ashley Eagle-Gibbs, Esq.
Conservation Director

cc: Susan Ashcraft, California Fish & Game Commission Marine Advisor
    Randy Lovell, California Department of Fish & Wildlife State Aquaculture Coordinator