

AMENDED IN SENATE MAY 3, 2005  
AMENDED IN SENATE APRIL 12, 2005  
AMENDED IN SENATE MARCH 31, 2005

**SENATE BILL**

**No. 768**

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**Introduced by Senator Simitian**

February 22, 2005

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An act to amend Section 15400 of, and to add ~~Section 54.5~~ Sections 54.5 and 15008 to, the Fish and Game Code, and to amend Section 30411 of the Public Resources Code, relating to aquaculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 768, as amended, Simitian. Marine finfish aquaculture.

**Existing**

(1) *Existing* law authorizes the Fish and Game Commission to lease state water bottoms to any person for aquaculture, and authorizes the commission to adopt regulations governing the terms of the leases. Existing law prohibits state water bottoms from being leased, unless the commission determines that the lease is in the public interest.

This bill would prohibit a person from engaging in marine finfish aquaculture, as defined, without a lease from the commission. The bill would require leases and regulations adopted by the commission for marine finfish aquaculture to meet certain standards.

(2) The California Coastal Act requires the Department of Fish and Game, in consultation with the Aquaculture Development Committee, to prepare programmatic environmental impact reports for existing and potential commercial aquaculture operations in both coastal and inland areas of the state if certain conditions are met.

This bill would require a final programmatic environmental impact report prepared pursuant to that requirement for coastal marine finfish

aquaculture projects approved by the commission to ensure that marine finfish aquaculture is managed in a sustainable manner that adequately considers specified *environmental* factors.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The United States Commission on Ocean Policy recently  
4 determined that the farming of marine species is a rapidly  
5 growing domestic and international industry that could become  
6 an important source of seafood for the United States.

7 (b) The United States Commission on Ocean Policy also  
8 determined that the growth of marine aquaculture presents  
9 potential threats to the marine environment because of an  
10 inadequate regulatory regime, and that the management of  
11 marine aquaculture activities should minimize potential adverse  
12 environmental impacts including: the spread of disease and  
13 parasites; contamination of and competition with wild fish  
14 stocks; degradation of water quality, wetlands and other natural  
15 habitats; contamination from fish wastes, dead fish, uneaten food  
16 and antibiotics; harmful interactions with birds, marine mammals  
17 and wildlife; conflicts with commercial and recreational  
18 activities; introduction of nonnative species; and ecosystem  
19 effects from the use of fish meal.

20 (c) Marine aquaculture can also have adverse economic  
21 impacts on commercial fisheries of wild fish stocks.

22 (d) The United Nations Food and Agriculture Organization  
23 estimates that by 2030 more than half of the fish consumed  
24 globally will be produced through aquaculture, and has issued a  
25 Code of Conduct for Responsible Fisheries that calls for  
26 measures to monitor and minimize adverse impacts from marine  
27 aquaculture.

28 (e) In 2003, California banned the cultivation of salmon,  
29 transgenic fish species, and exotic finfish species in the waters of  
30 the Pacific Ocean regulated by the state, but comprehensive  
31 standards do not exist to address the full range of potential  
32 adverse impacts of marine finfish aquaculture in state waters.

1 (f) Marine finfish aquaculture is a young and growing  
2 industry, and many of its environmental impacts should be  
3 addressed now before serious ecological damage occurs.

4 (g) Therefore, it is the intent of the state to act now to manage  
5 marine finfish aquaculture in a precautionary and  
6 *environmentally* sustainable manner.

7 SEC. 2. Section 54.5 is added to the Fish and Game Code, to  
8 read:

9 54.5. “Marine finfish aquaculture” means the ~~spawning,~~  
10 ~~incubation, or cultivation~~ *propagation, cultivation, or*  
11 *maintenance* of finfish animals in the marine waters of the state.

12 SEC. 3. Section 15008 is added to the Fish and Game Code,  
13 to read:

14 15008. (a) *The department shall, in consultation with the*  
15 *Aquaculture Development Committee, prepare programmatic*  
16 *environmental impact reports for existing and potential*  
17 *commercial aquaculture operations in both coastal and inland*  
18 *areas of the state if both of the following conditions are met:*

19 (1) *Funds are appropriated to the department for this purpose.*

20 (2) *Matching funds are provided by the aquaculture industry.*

21 (b) *The final programmatic environmental impact report*  
22 *prepared pursuant to subdivision (a) for coastal marine finfish*  
23 *aquaculture projects and approved by the commission under the*  
24 *California Environmental Quality Act set forth in Division 13*  
25 *(commencing with Section 21000) of the Public Resources Code,*  
26 *shall ensure that marine finfish aquaculture is managed in an*  
27 *environmentally sustainable manner that, at a minimum,*  
28 *adequately considers all of the following factors:*

29 (1) *Appropriate areas for siting marine finfish aquaculture*  
30 *operations to avoid impacts on user groups, public trust values,*  
31 *and the marine environment.*

32 (2) *The effects on sensitive ocean and coastal habitats.*

33 (3) *The effects on marine ecosystems, commercial and*  
34 *recreational fishing and other important ocean uses, and public*  
35 *trust values.*

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

38 (5) *The effects of the use of chemical and biological products*  
39 *and pollutants and nutrient wastes on human health and the*  
40 *marine environment.*

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

2 (7) *The cumulative effects on the marine environment.*

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

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

7 (10) *The design of facilities and farming practices so as to*  
8 *avoid environmental impacts.*

9 (11) *The cumulative effects of similar projects on the marine*  
10 *environment.*

11 ~~SEC. 3.~~

12 *SEC. 4.* Section 15400 of the Fish and Game Code is  
13 amended to read:

14 15400. (a) Except as prohibited by Section 15007, the  
15 commission may lease state water bottoms *or the water column*  
16 to any person for aquaculture, including, but not limited to,  
17 marine finfish aquaculture. The commission shall adopt  
18 regulations governing the terms of the leases. No state water  
19 bottoms shall be leased, unless the commission determines that  
20 the lease is in the public interest in a public hearing conducted in  
21 a fair and transparent manner, with notice and comment, in  
22 accordance with commission procedures.

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

27 (1) The lease site is considered appropriate for marine finfish  
28 aquaculture in the programmatic environmental impact report *if*  
29 prepared pursuant to subdivisions ~~(e) and (f) of Section 30411 of~~  
30 ~~the Public Resources Code (a) and (b) of Section 15008.~~

31 (2) A lease ~~will not~~ *shall not unreasonably* interfere with  
32 fishing or other uses *or public trust values*, disrupt significant  
33 wildlife and marine habitats, or harm the ability of the marine  
34 environment to support ecologically significant flora and fauna.

35 ~~(3) The discharge of pollutants must be prevented to the~~  
36 ~~maximum extent possible and, where it cannot be prevented,~~  
37 ~~impacts must be mitigated to the maximum extent possible.~~

38 ~~(4)~~

39 (3) The use of fish meal *and fish oil* shall be minimized ~~to the~~  
40 ~~maximum extent possible.~~

1 ~~(5)~~

2 (4) Leases may be for a period of 10 years, renewable every  
3 five years at the discretion of the commission. Fees shall, at a  
4 minimum, be sufficient to pay for the costs of administering the  
5 marine finfish aquaculture program, and monitoring and  
6 enforcing the terms of the leases.

7 ~~(6)~~

8 (5) Fish stocks and facilities shall be monitored regularly and  
9 at least annually, and fish stocks shall be removed and facilities  
10 closed if the commission determines that the facilities or  
11 operations ~~may damage~~ *pose a threat to* the marine environment.

12 ~~(7) Lessees shall be responsible for restoring damage to~~  
13 ~~human health and the marine environment to prepermit~~  
14 ~~conditions through bonding or other mechanisms deemed~~  
15 ~~appropriate by the commission.~~

16 ~~(8)~~

17 (6) *Lessees shall provide baseline assessments of the proposed*  
18 *lease site to the commission prior to the issuance of the lease,*  
19 *and shall monitor the benthic habitat during operation of the*  
20 *lease in a manner determined by the commission. Lessees shall*  
21 *be responsible for damages to human health and the marine*  
22 *environment caused by their operations, and for restoring the*  
23 *lease site to prepermit conditions. The commission shall require*  
24 *financial assurances of each lessee to ensure that restoration is*  
25 *performed to the satisfaction of the commission. Financial*  
26 *assurances may take the form of surety bonds executed by an*  
27 *admitted surety insurer, irrevocable letters of credit, trust funds,*  
28 *or other forms specified by the commission as it reasonably*  
29 *determines is available and adequate to ensure the site is*  
30 *restored pursuant to this section.*

31 (7) Finfish numbers and density shall be limited to what can  
32 be safely raised while protecting the marine environment.

33 ~~(9)~~

34 (8) Adverse interactions with marine mammals and other  
35 marine wildlife shall be prevented ~~to the maximum extent~~  
36 ~~possible.~~

37 ~~(10)~~

38 (9) The use of all drugs, chemicals, and antibiotics, and  
39 amounts used and applied, ~~must be minimized to the maximum~~  
40 ~~extent possible~~ *shall be minimized.* All pharmaceuticals,

1 chemicals, and antibiotics, and the amounts used and applied,  
2 shall be approved by the United States Food and Drug  
3 Administration for marine finfish aquaculture, and reported to  
4 and reviewed by the commission on a regular basis and at least  
5 annually.

6 ~~(11) All farmed fish shall~~

7 *(10) The commission shall require all farmed fish to be*  
8 *marked, tagged, or otherwise identified as belonging to the lessee*  
9 *in a manner determined appropriate by the commission—*  
10 *as belonging to the lessee in the event of escape, and all escaped*  
11 *fish shall be immediately reported to the commission.*

12 ~~(12)—~~

13 *(11) All facilities and operations shall be designed to prevent*  
14 *escape of farmed fish into the marine environment—to the*  
15 *maximum extent possible. In the event of escapes, all escaped*  
16 *fish shall be reported immediately to the commission, and the*  
17 *lessee shall be responsible for damages to the marine*  
18 *environment caused by those escaped fish.*

19 ~~(13)—~~

20 *(12) The State Water Resources Control Board shall ensure*  
21 *that the discharge of pollutants is prevented to the maximum*  
22 *extent possible. Monitoring and testing of water quality shall be*  
23 *required on a regular basis as deemed appropriate by the State*  
24 *Water Resources Control Board. All inspection and monitoring*  
25 *reports and other records, and all data on the discharge of*  
26 *chemical and biological pollutants, including, but not limited to,*  
27 *nutrients, dissolved oxygen, carbon dioxide, ammonia, and*  
28 *pathogens, shall be kept on file and available for public review.*

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

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

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

1 (B) *The California Ocean Resources Enhancement and*  
2 *Hatchery Program, as set forth in Article 8 (commencing with*  
3 *Section 6590) of Chapter 5 of Part 1 of Division 6, for the*  
4 *enhancement of white sea bass implemented pursuant to a*  
5 *memorandum of agreement by the California Coastal*  
6 *Commission, the department, and the Ocean Resources*  
7 *Enhancement Advisory Panel. For the purposes of this*  
8 *subparagraph, the memorandum of agreement related to the*  
9 *Ocean Resource Enhancement and Hatchery Program meets the*  
10 *requirement for a restoration or enhancement plan pursuant to*  
11 *this subdivision.*

12 (2) *Nonprofit hatcheries and nonprofit artificial propagation*  
13 *projects operated by, or on behalf of, licensed commercial or*  
14 *sport fishermen and fisherwomen for the purpose of recovery,*  
15 *restoration, or enhancement of California's native marine fish*  
16 *populations, pursuant to Chapter 8 (commencing with Section*  
17 *6900) of Part 1 of Division 6.*

18 SEC. 4. Section 30411 of the Public Resources Code is  
19 amended to read:

20 30411. (a) The Department of Fish and Game and the Fish  
21 and Game Commission are the principal state agencies  
22 responsible for the establishment and control of wildlife and  
23 fishery management programs, and the commission shall not  
24 establish or impose any controls with respect thereto that  
25 duplicate or exceed regulatory controls established by these  
26 agencies pursuant to specific statutory requirements or  
27 authorization.

28 (b) The Department of Fish and Game, in consultation with  
29 the commission and the Department of Boating and Waterways,  
30 may study degraded wetlands and identify those which can most  
31 feasibly be restored in conjunction with development of a boating  
32 facility as provided in subdivision (a) of Section 30233. Any  
33 study conducted under this subdivision shall include  
34 consideration of all of the following:

35 (1) Whether the wetland is so severely degraded and its natural  
36 processes so substantially impaired that it is not capable of  
37 recovering and maintaining a high level of biological  
38 productivity without major restoration activities.

39 (2) Whether a substantial portion of the degraded wetland, but  
40 in no event less than 75 percent, can be restored and maintained

1 as a highly productive wetland in conjunction with a boating  
2 facilities project.

3 (3) Whether restoration of the wetland's natural values,  
4 including its biological productivity and wildlife habitat features,  
5 can most feasibly be achieved and maintained in conjunction  
6 with a boating facility or whether there are other feasible ways to  
7 achieve these values.

8 (c) The Legislature finds and declares that salt water or  
9 brackish water aquaculture is a coastal-dependent use which  
10 should be encouraged to augment food supplies and to further the  
11 policies set forth in Chapter 4 (commencing with Section 825) of  
12 Division 1. The Department of Fish and Game may identify  
13 coastal sites it determines to be appropriate for aquaculture  
14 facilities. If the department identifies these sites, it shall transmit  
15 information identifying the sites to the commission and the  
16 relevant local government agency. The commission, and where  
17 appropriate, local governments, shall, consistent with the coastal  
18 planning requirements of this division, provide for as many  
19 coastal sites identified by the Department of Fish and Game for  
20 any uses that are consistent with the policies of Chapter 3  
21 (commencing with Section 30200) of this division.

22 (d) Any agency of the state owning or managing land in the  
23 coastal zone for public purposes shall be an active participant in  
24 the selection of suitable sites for aquaculture facilities, and shall  
25 make the land available for use in aquaculture when feasible and  
26 consistent with other policies of this division and other  
27 provisions of law.

28 ~~(e) The Department of Fish and Game shall, in consultation~~  
29 ~~with the Aquaculture Development Committee, prepare~~  
30 ~~programmatic environmental impact reports for existing and~~  
31 ~~potential commercial aquaculture operations in both coastal and~~  
32 ~~inland areas of the state if both of the following conditions are~~  
33 ~~met:~~

34 ~~(1) Funds are appropriated to the department for this purpose.~~

35 ~~(2) Matching funds are provided by the aquaculture industry.~~

36 ~~(f) The final programmatic environmental impact report~~  
37 ~~pursuant to subdivision (e) for coastal marine finfish aquaculture~~  
38 ~~projects approved by the Fish and Game Commission under the~~  
39 ~~California Environmental Quality Act (Division 13 (commencing~~  
40 ~~with Section 21000) shall ensure that marine finfish aquaculture~~

- 1 is managed in a sustainable manner that, at a minimum,  
2 adequately considers all of the following factors:
- 3 (1) ~~Appropriate areas for siting marine finfish aquaculture~~  
4 ~~operations that minimize impacts on other user groups and the~~  
5 ~~marine environment.~~
  - 6 (2) ~~The effects on sensitive ocean and coastal habitats.~~
  - 7 (3) ~~Assuring that the locations of marine finfish aquaculture~~  
8 ~~operations do not disrupt sensitive habitats and ecosystems, harm~~  
9 ~~commercial and recreational fishing, or adversely affect other~~  
10 ~~important ocean uses or public trust values.~~
  - 11 (4) ~~The effects on other plant and animal species, especially~~  
12 ~~species protected or recovering under state and federal law.~~
  - 13 (5) ~~The effects of the use of chemical and biological products~~  
14 ~~and pollutants and nutrient wastes on human health and the~~  
15 ~~marine environment.~~
  - 16 (6) ~~The effects of interactions with marine mammals and~~  
17 ~~birds.~~
  - 18 (7) ~~The cumulative effects on the marine environment.~~
  - 19 (8) ~~The effects of feed and fish meal on marine ecosystems.~~
  - 20 (9) ~~The effects of escaped fish.~~
  - 21 (10) ~~The design of facilities and farming practices so as to~~  
22 ~~reduce environmental impacts.~~