



# Save Our Seashore

A 501(c)(3) Charitable Organization (EIN 94-3221625)  
Founded in 1993 to Protect Marin County's Coastal Estuaries and Watersheds  
PO Box 342, Pt. Reyes Station, CA 94956 [gbatmuirb@aol.com](mailto:gbatmuirb@aol.com) 415-663-1881

July 16, 2015

To: California Department of Fish and Wildlife (CDFW) – Aquaculture Division  
[aquaculturematters@wildlife.ca.gov](mailto:aquaculturematters@wildlife.ca.gov)

Re: Tomales Bay Aquaculture Clean Up

## Save Our Seashore urges CDFW to close loopholes in its aquaculture clean-up program.



The above photos taken by Richard James are among many posted at <http://coastodian.org> in “Save Our Tomales Bay.” Under pressure from these photos, it appears that aquaculture companies in Tomales Bay have recently begun voluntary cleanups of some of the mariculture debris that has littered the shoreline of Tomales Bay for decades. However, these recent actions have only taken place after significant amounts of debris have been picked up both by Mr. James and by participants in the local Annual Coastal Cleanup. Yet aquaculture debris should be the responsibility of the aquaculture companies that earned profits from this material.

Mariculture leases issued by the California Fish and Game Commission (CFG) and managed by CDFW require a cleanup bond (see right). But the lease language has four regularly exploited loopholes that need to be closed.

As a financial guarantee of growing structure removal and/or clean-up expense in the event the lease is abandoned or otherwise terminated, Lessee shall place on deposit, pursuant to the "Escrow Agreement for Clean-up of Aquaculture Leases, California", the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_). Such money shall be deposited over a two-year period payable, three-quarters upon entering upon the lease, and one-quarter upon the first anniversary of such inception date. The escrow account shall be increased if the Fish and Game Commission determines that, if abandoned, the culture operation is likely to be more expensive to remove. The escrow account may be reduced by the Commission upon demonstration that the probable cost of removal of all improvements would be less than the deposit previously required. In its annual Proof-of Use Report, the Lessor shall advise the Commission of its best estimate of the probable cost of removal the lease operation. The escrow agreement, escrow holder, and escrow depository shall be agreed upon by the Executive Director of the Fish and Game Commission and the Lessor.

**Transfer Loophole** When a former lessee transfers its lease, CFGC/CDFW seemingly does not consider this a “termination” that triggers a required clean-up of all aquaculture equipment that will not be used by the new operator. For example, when Tomales Bay Oyster Company (TBOC) took over Lease M-430-04 and changed cultivation methods, the on-going use of much of the former cultivation equipment was terminated. But this “termination of use” did not trigger a clean-up because there was no “termination of lease.” Continuation of this “transfer loophole” will result in a growing mountain of aquaculture debris that will never trigger any clean-up.

**Save Our Seashore requests that any new, renewed or transferred aquaculture permit be conditioned on a full clean-up of existing aquaculture debris within the subject lease and areas adjacent as well as the removal of any aquaculture equipment by a prior operator that will not be used by the new operator.**

**Out of Sight / Out of Mind Loophole:** CDFW appears to assume that cleanup of aquaculture debris refers only to above-water debris. Efforts by Richard James have documented this omission at DBOC: <http://coastodian.org/sustainable-oyster-farming-west-marin-style-part-5-dbo-c-trash-in-drakes-estero-directors-cut/>. SOS believes that a significant amount of underwater aquaculture debris results from cultivation equipment that is lost and sinks to the bottom. **Save Our Seashore requests that the clean-up required to close Loophole #1 above also include aquaculture debris below water within the subject lease and areas adjacent as well as the filing of an approved plan for future monthly clean-up operations of above and below water aquaculture debris.**

**Self-Estimate Loophole** The CFGC lease requires the lessee to self-estimate the clean-up cost. This has led to gargantuan discrepancies between self-estimated cleanup costs and actual cleanup costs. For example, in a Proof of Use Report submitted to CDFW in February 2012, Drakes Bay Oyster Company (DBOC) stated that they “*do not expect the cleanup costs to change*” (from the existing \$10,000 clean-up estimate in its lease). However, ten months later in testimony to federal court under penalty of perjury, DBOC stated, “*the total cost for dismantling, removing, and disposing of the oyster racks would be approximately \$407,625.00.*” With TBOC estimating in its 2013 Proof of Use \$300,000 to clean up 156 acres, DBOC’s confirmation of a mere \$10,000 to clean up 1,060 acres seemingly raised no concerns. **Save Our Seashore requests that any new, renewed or transferred aquaculture permit be conditioned on the filing of an annual third-party estimate for the clean-up / removal costs for the equipment that remains in use including bottom bags containing product and all on-shore shellfish equipment.**

**Bond Loophole** Irrespective of the lessee’s self-estimate, CFGC seemingly does not adjust the “escrow account,” as the lease language allows, to reflect a reasonable estimate of cleanup costs. Further, CDFW seemingly does not assure that the required bond in the required amount is actually in place. For example, CDFW failed to insure that DBOC’s trivial \$10,000 bond was in place and thus the clean-up cost fell entirely to taxpayers. TBOC 2013 Proof of Use narrative estimates that “*Cleaning up and removing all of the equipment on the leases will cost 100 thousand dollars in the case of M-430-04...in the case of M-430-05, the expense would be...three times the expense at least*”). If this TBOC estimate is correct, then the TBOC clean up bond should be for \$400,000. **Save Our Seashore requests that any new, renewed or transferred aquaculture permit be conditioned on the verifiable posting of a bond in the amount of the above third-party clean-up cost estimate.**

In sum, the various well-intentioned clean-up mandates in the CFGC leases are ineffective and un-enforced. These factors have allowed California shellfish operators to pollute public shorelines and waters for decades, despite Fish and Game Code Chapter 5 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.*

The above four loophole closures are needed to insure that California’s Coastal Resources are protected and the reputation of the aquaculture industry is enhanced. Save Our Seashore appreciates the opportunity to comment.

Sincerely  Gordon Bennett, President, Save Our Seashore