



The
University of Mississippi

Oxford • Jackson • Tupelo • Southaven

National Sea Grant Law Center
Kinard Hall, Wing E - Room 262
Post Office Box 1848
University, MS 38677-1848
Office Phone: (662) 915-7775
Fax: (662) 915-5267
E-mail: sealaw@olemiss.edu

April 4, 2011

Paul G. Olin, Ph.D.
California Sea Grant Extension Program
UCSD/Scripps Institution of Oceanography
133 Aviation Blvd., suite 109

Re: Aquaculture Fees Covering Administration of Aquaculture Program (NSGLC-11-04-02)

This product was prepared by the National Sea Grant Law Center under award number NA09OAR4170078 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Dear Paul,

Please find attached our analysis of fees levied on aquaculture producers in California. The information is intended as advisory research only and does not constitute legal representation of California Sea Grant or its constituents. It represents our interpretations of the relevant laws and regulations. As I understand it, you are asking whether the Department of Fish and Game can charge aquaculture producers with complete cost recovery for administering the program, while others who use or harvest public trust resources from public lands or waters, such as those who receive recreational hunting licenses or commercial fishermen, are not required to cover the full cost of their respective programs.

California law allows the department to assess fees on aquaculture products grown on public lands and waters. According to the law, a privilege tax may be charged on aquaculture products grown on public lands and in public waters. The amount “shall be set at amounts necessary to **defray** the costs of the commission and the department in administering this division.” CAL. FISH

& GAME CODE § 15003 (Deering 2010). Section 15004 requires the department to analyze the fees and taxes at least once every five years “to ensure that the amount of the appropriate fee or tax is sufficient to **fully fund** the aquaculture program.” The money collected is to be deposited in the Fish and Game Preservation Fund and expended solely on the aquaculture program. CAL. FISH & GAME CODE § 15005.

The legislature stated its reasoning behind the fees:

The Legislature finds and declares that Division 12 (commencing with Section 15000) of the Fish and Game Code, relating to aquaculture, was enacted by Chapter 1486 of the Statutes of 1982 without providing adequate funding and staffing to the Department of Fish and Game for its administration and implementation. It is the Legislature’s intent, by enacting this act, to provide additional funding and staffing for this purpose. It is further the Legislature’s intent that the fees levied under subdivision (a) of Section 15103 shall generate additional revenue in an amount not less than thirty-five thousand dollars (\$35,000) annually. 1987 Cal. Stat. ch. 1065.

The department charges fees to others who use or harvest public trust resources from public lands or waters. CAL. FISH & GAME CODE § 710 (Deering 2010) notes a lack of adequate funding of the department to meet its mandates, including carrying out its public trust responsibilities. Section 710.5(b) goes on to note “to the extent feasible, the department should continue to be funded by user fees.” User fees are defined as “all fees collected by the department, including, but not limited to, recreational hunting and fishing licenses, landing taxes, commercial licenses, permits and entitlements, and other fees for use of the resources regulated or managed by the department.” And, §710.5 (c) states “...It is the intent of the Legislature to extend the current user-based funding system by allocating the transactional costs of wildlife protection and management to those who would consume those resources through urbanization and development, as well as to those traditional sport and commercial users...” The legislature stated that to ensure adequate funding

The costs of commercial fishing programs shall be provided out of revenues from commercial fishing taxes, license fees, and other revenues, from reimbursements and federal funds received for commercial fishing programs, and other funds appropriated by the Legislature for this purpose. The costs of hunting and sportfishing programs shall be provided out of hunting and sportfishing revenues and reimbursements and federal funds received for hunting and sportfishing programs, and other funds appropriated by the Legislature for this purpose...” § 711(a).

It appears at least some of the money for these programs is provided by user fees and licenses.

Insofar as state wildlife trust resources exist and depend upon federal proprietary lands or federal land and water adjacent to or affecting state trust resources, all persons engaging in projects or activities under federal license, contract, or permit, to the extent permitted by federal law, shall be governed by this article and shall pay project filing fees unless the payment of state filing and permit fees is explicitly preempted by the

*authority of the federal agency permitting the use or modification of state trust resources.
Cal Fish & G Code § 711.7*

According to § 711.4, the department will collect filing fees to

*... defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act. (b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to **pay the full costs of department programs as specified**. The department shall annually adjust the fees pursuant to Section 713.*

There are exceptions to those who have to pay the filing fee, including projects that have no effect on fish and wildlife, as well as projects with costs payable from other sources held by the department.

While the aquaculture program is the only one required to be “fully funded” by its fees, it seems as though the legislature does require other users to cover funding and staffing costs of the department programs. Fees for those programs are not as clearly dedicated as those required by aquaculture projects. For the aquaculture program, money is taken from aquaculture user and then put in the fund dedicated for costs incurred by the aquaculture program. In the case of a commercial fisherman, for example, the fee from his license is taken and put in a general fund with other general funds from the legislature or other sources to fund the department in general. The fees may be lower with respect to commercial and recreational fishing, because the state has many more revenue sources to draw from, including federal funds. In addition, within five years of enacting the aquaculture program, the legislature determined that it was not sufficiently funded and approved the imposition of fees to fully fund it.

I hope this information is helpful. If you have any further questions, please do not hesitate to contact us.

Sincerely,

Terra Bowling
Research Counsel