

**VENTURA SHELLFISH ENTERPRISE
PRELIMINARY OPERATIONS PLAN – RESPONSE TO COMMENTS**

#	Comment Originator	Location in Document	Public Comment	VSE Team Response
1	EDC, FOE, OCR, SCF, CCPN, WCF, EACWM, SBCK, NWAMA, CBD, OPS	Project Location and Description	<p>Thank you for the opportunity to comment on the Preliminary Operations Plan for the proposed Ventura Shellfish Enterprise Project. As explained in our July 13, 2020, letter, the undersigned groups are concerned about the proposed siting of this Project in federal waters. Collectively, our organizations have extensive knowledge of marine resources off the California coast and experience navigating the various laws and policies associated with coastal and marine development. We remain convinced that state environmental, safety, and health regulations and public processes are more robust and protective than their federal counterparts. Additionally, LAFCo rules prohibit the District from pursuing a project in federal waters. For these reasons, we urge you to refrain from submitting the Preliminary Operations Plan to the Army Corps of Engineers and California Coastal Commission.</p> <p>Instead, we urge the District to work with the relevant state agencies to explore a proposal in state waters. The California Coastal Commission is working on a Guidance for aquaculture projects in state waters that will be completed by the end of the year. The California Department of Fish and Wildlife is tasked with preparing a programmatic Environmental Impact Report for aquaculture in state waters, and is completing an Aquaculture Information Report. The California Ocean Protection Council identified promoting sustainable aquaculture as a primary objective in its 2020-2025 Strategic Plan, with a goal of developing a statewide aquaculture action plan focused on marine algae and shellfish by 2023. These efforts involve coordination with various state agencies to produce a comprehensive process for reviewing</p>	<p>Many of these comments were already addressed in VPD’s response to the commenters’ previous comments, provided on September 1, 2020. A copy of the letter (attachments excluded) is attached to the November 18, 2020 Board of Port Commissioners Report. Please refer to our previous correspondence for a discussion of issues not discussed below.</p> <p>Many of these comments concern issues beyond the scope of the Preliminary Operations Plan. As noted in our previous letter, we welcome the opportunity to meet with the commenters to discuss these issues and concerns.</p> <p>Regarding the ongoing state processes, VPD is aware of the California Coastal Commission (CCC) draft guidance and has in fact encouraged the CCC to expand its guidance to include a discussion of its federal consistency review for projects in federal waters. We assume that the CCC can use any applicable guidance in its review of the Ventura Shellfish Enterprise (VSE) project as part of its consistency certification.</p> <p>Regarding the California Department of Fish and Wildlife’s (CDFW) draft programmatic environmental impact report (PEIR), there have been efforts to draft the PEIR over the past 14 years, but we understand that there is no current CDFW effort ongoing at this time to complete the PEIR analysis. Further, as mentioned in our previous communication, the California Fish and Game Commission (CFGC) has imposed a moratorium on new aquaculture lease applications in</p>

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			<p>proposed projects and ensure adequate attention to environmental, health, and safety concerns.</p> <p>In contrast, the federal review process is mired in controversy and potential legal obstacles. Several federal laws and regulations are weaker than state requirements, e.g., the National Environmental Policy Act lacks the substantive mandate to avoid or minimize environmental effects that the California Environmental Quality Act requires. In addition, the Coastal Commissions consistency review under the federal Coastal Zone Management Act lacks the permitting authority, environmental review, oversight, and enforcement that apply to issuance of coastal development permits.</p> <p>Finally, state LAFCo requirements do not allow the District to operate in federal waters. Accordingly, we urge the Commission to refrain from submitting the Preliminary Operations Plan to the Army Corps of Engineers and Coastal Commission, and to instead direct your staff to consider a proposal in state waters.</p>	<p>California state waters; therefore, there is no legally viable state waters alternative available at this time.</p> <p>See our previous September 1, 2020 response (Attached to the November 18, 2020 Board of Port Commissioners Report (attachments excluded)). Regarding the legal obstacles cited in the comment, the comment references the recent decision in <i>Gulf Fishermen's Ass'n v. Nat'l Marine Fisheries Serv.</i>, 968 F.3d 454 (5th Cir. 2020), <i>as revised</i> (Aug. 4, 2020). That decision concerned a NOAA program where NOAA asserted permitting and leasing authority under the Magnuson-Stevens Act which was invalidated by the court. This decision is not applicable to the VSE project, which is not seeking a permit or lease from NOAA (other than consultation with the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (ESA)).</p> <p>The Preliminary Operations Plan was drafted in response to a request from the CCC seeking clarification of responsibilities for operations, monitoring, enforcement, and compliance. It will be relevant information to the CCC that can be utilized in its consistency review of the project and there does not appear to be justification for delaying submission of the Preliminary Operations Plan in compliance with the CCC's request.</p>

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2	Santa Barbara Mariculture Co.	General Comment	<p>The first major consideration I would want to know and is not detailed in your report are what are the weather conditions going to be like at the farm.? It's a direct correlation. When the weather gets bad, work proficiency goes down. I would want to know how many days and hours of each day I can go to work. That drives everything. The less days and hours I can be out there, the less I will get done.</p> <p>I would like to see a comparison of weather conditions for offshore farms in New Zealand and England with weather conditions at the VSE project site. I would like to know wind speeds and direction, current speeds and direction, and swell intensity. Knowing this will determine how many days I can go to work and will dictate what can be accomplished in the allotted time. Most mussel farming in the world takes place in sheltered waters. This operation plan does not do enough to address weather and farming in unsheltered waters.</p>	<p>The wind speeds and direction, current speeds and direction, and swell intensity were all evaluated in the siting analysis prepared by NOAA's National Centers for Coastal Ocean Science, National Ocean Service (NCCOS-NOS) program, as well as an engineering analysis prepared by Tobias Dewhurst, Kelson Marine Company. The siting analysis prepared by NOAA is attached to the September 12 and 26, 2018 Board of Port Commissioners Report. The engineering analyses are provided as Attachment A and B of the Operations Plan.</p> <p>Generally, the weather conditions off the coast of Southern California are much more favorable and have less storm conditions than other areas where shellfish aquaculture is common, including England, Scotland, and Norway. The proforma assumes 200 days on the water (e.g., harvesting) with the remaining work days attending to boat and gear maintenance, seeding, weather-related constraints, etc. In addition, various longline designs have been modeled for various conditions associated with a 100-year storm and are available as attachments to the Operations Plan (see Dewhurst 2019 - Appendix A and Dewhurst 2020 – Appendix B).</p>
		Project Location and Description	<p>I also wouldn't clump the 20 farms all in one cluster. It seems that if something goes wrong at one farm, that could affect all the farms. As a potential VSE farmer, I wouldn't want to be wronged for someone else's mistakes or problems.</p> <p>I would definitely spread the farms out to mitigate for environmental or operational issues. If some farms are unable to produce mussels for various reasons, at least other farms could be bringing in product keeping the whole collective in business.</p>	<p>As part of the extensive outreach for the project, we sought guidance as to the orientation of the proposed project. Commercial fishing interests had a strong preference towards a consolidated design to minimize impacts to fisheries. A consolidated farm plan also can reduce potential impacts to marine mammals and vessel traffic (including navigational safety and efficiency) through avoiding a potential maze of dispersed and separated farms. Potential impacts to marine mammals with the consolidated design include less interference with migration or feeding routes, less potential for species to be excluded from foraging habitats, and potentially reduced risk of entanglement.</p> <p>Monitoring of gear compliance, benthic monitoring, and potential marine mammal entanglement is designed in such a manner that it can detect impacts from individual farm sites and</p>

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				<p>corrective action can be taken on a specific farm if a particular grower encounters problems. For example, equipment will include grower identification information; gear monitoring will be conducted on a regular basis by growers and VPD Harbor Patrol; and the project design has been modeled at various wave, current, and wind conditions to withstand 100-year storms and incorporates safety factors. The engineering analyses are provided as Attachment A and B of the Operations Plan. Noncompliance will also be addressed through operating agreements between the VPD and growers.</p>
		Economic and Fiscal Impact	<p>At first glance, the business proposal for me is too outlandish and does not consider the very risky nature of the business. Agriculture and commercial fishing are phenomenally risky and I feel that the VSE is asking it's growers to carry too much debt. \$1.1 million of debt with a monthly payment of \$11,000 is significant. What happens when you have a bad production year? The fact that the farm will be pegged at maximum production year after year after the second year is fantasy.</p>	<p>The current draft grower proforma incorporates crop insurance into the business plan to mitigate for poor production years.</p>
		General Comment	<p>Based on a previous mussel farming fantasy, I can almost predict what is going to happen. When production values are overinflated, investor optimism will fuel overinvestment which will produce too many mussels which will drive the price of mussels down and begin to degrade the environment. The reduction in income and production will then bankrupt the mussel farmer. It happens quite a lot in many resource dependent industries. This is bad. This is really bad for me. Too much product without proper marketing will drive the price of mussels down hurting my current business. Too much product in the water may increase the risk of whale entanglement and bottom deposition. This will increase regulatory costs for my business. Too many growers going bankrupt will cause political turmoil for me and decrease public acceptance.</p>	<p>California, and the United States as a whole, imports approximately 60% to 90% of its seafood annually from other countries, of which half is aquaculture. There is a strong demand for seafood that can be met by local sources and a strong market for both the VSE project and other regional growers. For example, in Washington State, there are over a hundred companies engaged in shellfish aquaculture, which supply regional, domestic, and international markets, and have succeeded for decades in meeting demand through a diverse group of small, medium, and large-scale aquaculture companies. The same is true in the New England aquaculture industry.</p> <p>Proper marketing is an important factor. Currently, the draft grower proforma does not include expenses for marketing and assumes that the wholesalers and retailers would bear marketing costs (which indirectly may be borne by the growers).</p>

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				<p>Regarding the comment concerning potential whale entanglement and benthic impacts, please see the VSE project Biological Assessment which discusses these potential impacts in detail. It concludes that, upon incorporation of the proposed mitigation measures and monitoring plans (including a marine mammal entanglement plan and benthic monitoring plan), these impacts are considered less than significant.</p>
		General Comment	<p>I grow considerably less product on my farm which translates into a lot less environmental impact. My investment is considerably lower which translates into higher probability in surviving production shortfalls. Production shortfalls are the norm in farming. You need to account for this.</p> <p>I know the fantasy is a good sell. There are lots of benefits to optimism, but this VSE proposal has not prepared for the worst. I would like to see scenarios pondered when the worst does happen. If you actually have a plan for when the worst happens, this will actually help you succeed in the long run.</p>	<p>The VSE project has been conservatively designed to minimize the project's environmental impact through the incorporation of mitigation measures, best management practices, and robust monitoring plans discussed in greater detail in the VSE project biological assessment and attachments to the Preliminary Operations Plan.</p> <p>The project is also proposed to be phased, such that only 500 acres will be installed initially. Expansion of the project site to include additional farm acreage will only be allowed provided that the project meets certain identified thresholds and standards established by regulatory agencies as part of their approval of project permits and monitoring plans. In addition, the current draft grower proforma incorporates crop insurance into the business plan to mitigate for poor production years.</p>

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		Economic and Fiscal Impact	Getting 5 farmers to pool their money to buy a boat together is ridiculous. There are all kinds of ways this can go wrong. What I would do is to get all the farmers to pool their money to form a marketing association. The primary function is to keep the farm gate price of mussels high and even to increase as production ramps up. This is central to getting it right.	<p>As noted above, proper marketing is an important factor. Currently, the draft grower proforma does not include expenses for marketing and assumes that the wholesalers and retailers would bear marketing costs (which indirectly may be borne by the growers).</p> <p>There are lots of different ways to structure the investment in farm vessels. The draft grower proforma currently calls for multiple farms (5 or more) to be serviced and harvested by one purpose-built boat. It doesn't specify whether that boat would be owned by one, all, or any of the farms. It could be owned or financed by any interested party, including the wholesaler, for instance, who could simply charge for the service and take it off the sale price.</p>
		General Comment	The high cost of doing business in this State makes it hard for the farmer to stay in business. Local seafood has to compete with international products produced at lower costs. The State of California should be buying mussels at the costs it requires it's producers to operate in the State. That's the responsible thing to do. Your mussel farmers need to have price guarantees built into the business plan. The State should not mandate stringent environmental controls for its local seafood producers while allowing for cheap imported seafood to flood the market at an outside environmental cost. Local seafood producers have no chance to prosper in this unfair relationship. Public opinion continues to make local seafood producers the scapegoats for California's degradation of the ocean environment.	VPD has no control over state or federal environmental controls or permitting; however, a key goal of the VSE project is for VPD to acquire all necessary regulatory permits and approvals and perform all required environmental review in order to significantly reduce the startup costs for growers who seek to operate within the VSE project site. In addition, one of the goals of the NOAA California Sea Grant VPD has received includes to provide an entitlement and permitting template for aquaculture projects to the broader industry state-wide.

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3	Mary Luna	Economic and Fiscal Impact	<p>The VSE is a wonderful project that up until now has given all the opportunity to participate in its formation through public comment. I would however like to point out that, at least from my perspective, it still needs to be made more clear what measures will be taken to ensure that one of the objectives "To provide economies of scale, pre-approved sub-permit area, and technical support to include small local producers who would not otherwise be able to participate in shellfish aquaculture" is accomplished. The startup costs seem to be very high for the average businessperson.</p>	<p>A key goal of the VSE project is for VPD to acquire all necessary regulatory permits and approvals and perform all required environmental review in order to significantly reduce the startup costs for growers who seek to operate within the VSE project site.</p> <p>The start-up costs described for this project are reasonable and similar to what small businesses engage in on a regular basis with the cooperation of lending institutions in the U.S. The costs of simply obtaining the permits would financially bankrupt or turn away most applicants, which provides a significant savings for the small start-up businessperson.</p> <p>Indeed, there will still be significant costs for potential growers, including purchasing equipment and seed, monitoring costs, and potential purchase of a boat to service the project site. Growers will be responsible for these operational costs and it is the responsibility of potential growers to determine whether they have the economic resources to finance such additional start-up costs.</p>
4	Ventura Harbor Marina Associations, LLC.	General Comment	<p>Requested more time for the public to review and comment on the documents presented at the VPD Board Meeting on September 2, 2020, especially for commercial fishermen who are currently out and have not seen the documents.</p>	<p>More time has been provided for review and public comments are requested by October 1, 2020.</p>

		<p>Appendix B – Biological Assessment</p>	<p>Blue whales were incorrectly represented in the report and their presence occurs on an annual basis. The report requires revisions.</p>	<p>Blue whales have been observed migrating and feeding through the Santa Barbara Channel on many occasions, with several occurrences within the Action Area (Point Blue Conservation Science 2018). In general, this species migrates poleward to feed in the summer and to the tropics to breed in the winter (Jefferson et al. 2008). Blue whales, like all cetaceans in the Channel, do not use the entire Channel uniformly. Blue whales are found in coastal and pelagic environments on the continental shelf (Fiedler et al. 1998) and in deep water far offshore between the surface and depths of over 100 m (Croll et al. 2001). Most occurrences are north of Santa Rosa and western Santa Cruz Island along the 200-meter isobath (Cascadia 2011), approximately 7.4 miles west of the Action Area. These specific locations along the 200 m isobaths are areas of upwelling, which brings nutrients to the surface and forms the basis of the marine food chain. It's in these areas where krill are abundant and blue whales congregate. Designated important blue whale feeding areas indicate no overlap with the project site (Calambokidis et al. 2015).</p> <p>In the Biological Assessment, we focused on the species most likely to occur in the action area. We don't focus on blue whales as much because of their far lower incidence of entanglements per West Coast Whale Entanglement Summary reports. Therefore, we assigned a lower potential to occur for blue whales in the action area. While blue whales were certainly considered, BMPs are targeted towards whales of most significant concern.</p> <p>Last, there are currently ongoing discussions on the best scientific approach in balancing the need for the project structural integrity and preventing marine mammal entanglements, which will be reflected in future updates to the Operations Plan. Based on comments received, further engineering analyses were performed in November 2020 to consider structural integrity and whale entanglement risk (see Kelson Marine Co. 2020 as Attachment B of the Operations Plan). In addition, the project design may be further refined based on ongoing NOAA studies (e.g., whale entanglement simulations). Based on these ongoing discussions, and as data</p>
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			<p>Costs estimated made for the service and harvest vessels were too low.</p>	<p>becomes available, future refinement of the project design will be considered.</p> <p>The Grower Proforma costs for a single 100-acre farm estimated \$300,000 for a 40' service boat plus \$20,000 for specialized seeding equipment. In addition, the cost estimates \$1.5 million for a harvest vessel to be shared by 5 Growers (\$300,000 per 100-acre farm) and additional costs (\$150,000) for harvesting equipment.</p> <p>Based on experienced mussel farmers knowledge, these costs were reviewed again and are reasonable. The estimation of a \$1.5 M vessel cost came from quotes Scott Lindell (Woods Hole Oceanographic Institution) received in Europe and New Zealand for new purpose-built harvest boats. These quotes came in lower (about \$1.2M) and included an assumed premium to either import it or build it in the United States. The \$300K per farm price came from the supposition that 5 farms would equally share the cost of its services.</p> <p>Mr. Lindell is confident that a smaller service boat (30 to 50') can be purchased and re-outfitted for \$300K or less. Some boats may need more work than others to make them usable and most would need a hydraulic crane and starwheels on the rail to make them useful for planting seed and managing buoyancy, which would be a retrofit of less than \$100K.</p> <p>In addition, research into the cost of similar vessels resulted in a similar cost estimate. That is, \$325K – \$390K for a 4014 CTC (twin outboard and a small house, bow lander and tow post – aquaculture boat used in Hawaii); and \$700K for a 4214 Reverse chine monohull (used for fishing and crabbing). Costs range depending on how the vessel is outfitted.</p>
		General Comment	Commission should look into grant opportunities for commercial fishermen to afford the startup costs.	Grant opportunities for fishermen will be included in future efforts for this project.

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5	Pacific Coast Federation of Fisherman's Association	General Comment	Requested more time to review documents presented at the VPD Board Meeting on September 2, 2020.	More time has been provided for review and public comments are requested by October 1, 2020.
		General Comment	There have only been three (not five) reported entanglements in lobster gear.	<p>In California, the larger problem has been the type of gear. Numbers are not so important as it is that agencies have identified specific types of gear that have been shown to be problematic. This project aims to optimize the design (engineering design) and (data on entanglements).</p> <p>Reported entanglements are predominantly from crab, gillnet and spiny lobster fisheries. Fixed fisheries gear (e.g., pot and trap gear) is the most commonly recognized and reported gear type causing entanglements since 2000. Documented entangled animals and disentanglement efforts in the Pacific Northwest have mostly involved gray whales and humpback whales and have involved both gill nets and crab gear. More recently, from 2014 to 2017, the majority of the whale entanglements involved humpback whales and most of the entanglements were from commercial Californian and Washington Dungeness crab traps, and gillnet fisheries.</p> <p>In contrast to fishing gear, there are far fewer documented entanglement cases in mussel aquaculture gear. Interactions and entanglements with longline aquaculture gear worldwide are rare, and close approaches by protected species are seldom documented. West coast entanglement summaries for 2015 and 2016 report no entanglements from mussel aquaculture fisheries.</p>

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6	Ventura Local Agency Formation Commission	General Comment	<p>LAFCo staff has received multiple inquiries recently regarding LAFCo’s potential role in the Port District’s proposed Ventura Shellfish Enterprise (VSE) project to accommodate a mussel farm. These inquiries stem from misleading language included in the Port District’s staff report prepared for Item 2 on the agenda for the Board’s October 7 meeting (Consideration of Preliminary Operations Plan and Draft Economic and Fiscal Impacts of the Proposed Ventura Shellfish Enterprise Project). Due to this apparent confusion, I wish to clarify LAFCo’s position.</p> <p>According to the staff report, the United States Army Corps of Engineers withdrew the Port District’s application for a permit for the VSE project due, in part, to the fact that the Port District had not resolved “a jurisdictional issue raised in the LAFCo letter” to the Army Corps. The staff report continues, “The Port District is working cooperatively with the Ventura LAFCo to resolve their differences...” (pages 18-19 of the staff report).</p>	<p>The comment appears to imply that the statement in the VPD’s staff report that VPD is working cooperatively with LAFCo to resolve their differences is inaccurate. That statement is based upon a letter jointly submitted by VPD and LAFCo to the U.S. Army Corps of Engineers (Corps), dated November 12, 2019, which states “the Commission directed LAFCo staff to work together with Port District staff to continue to explore any available options to resolve the matters raised in the LAFCo staff report that was prepared for the sphere review, up to and include special legislation addressing the VSE project . . .” This is also consistent with the direction provided by the Ventura LAFCo Board at its October 16, 2019 meeting to “Direct staff to work with the VPD for a solution to the issue raised regarding VPD’s planned mussel farm and other options that may include new legislation . . .” VPD continues to seek to work cooperatively with Ventura LAFCo to resolve their outstanding issues and plans to reach out shortly to discuss these issues further.</p>

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		General Comment	<p>At its October 16, 2019 meeting, the Ventura LAFCo reviewed the sphere of influence¹ (or sphere) for the Port District to determine if the sphere could be expanded to include the VSE site. The site is located in federal waters outside state boundaries and outside the Port District’s jurisdictional boundaries. The inclusion of the territory within the sphere is necessary to allow for LAFCo to authorize the Port District to exercise the functions necessary to develop the mussel farm. However, the Commission determined that it was unable to expand the sphere to include the territory because:</p> <ul style="list-style-type: none"> • As a state agency, LAFCo can neither expand a sphere of influence to include territory located outside state jurisdiction nor authorize a special district to exercise functions and services outside state jurisdiction, and • The principal act for port districts, located in the Harbors and Navigation Code, does not grant port districts the power to exercise the functions/services that are necessary to develop and operate a mussel farm outside state jurisdiction. <p>At the direction of the LAFCo Commission, staff worked with Port District staff to identify options to resolve these matters, including special legislation. It became clear almost immediately that special legislation was the only option and, having fulfilled the Commission’s direction, LAFCo staff considers its involvement in the matter complete. Though we understand that the District may disagree, LAFCo’s position that 1) the Port District must obtain LAFCo approval to develop/operate the VSE and 2) the Port District does not have the authority to develop/operate the VSE in federal waters has not changed, and it is unlikely to change absent special legislation.</p>	<p>These comments go beyond the scope of the Preliminary Operations Plan and are addressed in the extensive comments previously submitted to Ventura LAFCo on this subject.</p>

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7	California Coastal Commission	Permit Review	We are writing today to clarify the current status of the project and its review by the Commission. As you are aware, on February 18, 2020, the U.S. Army Corps of Engineers notified the District that its permit application had been withdrawn. Upon withdrawal of the permit application by the U.S. Army Corps of Engineers, the District's consistency certification with the Commission was also withdrawn (as noted in the March 20, 2020 letter to the District from Commission staff). Thus, Commission staff is not currently reviewing any aspect of the District's proposed project.	Comment noted.
		Permitting Process	Furthermore, we strongly recommend that if the District proceeds with a shellfish project, that it move this project proposal into State waters. This recommendation is based on two factors. First, there is no path forward for the project in federal waters without significant legislation to overturn existing state law and that legislation appears unlikely. The Commission expressed significant concerns last year over AB-2370, and would not be supportive of a similar attempt next year.	We appreciate this perspective and are working cooperatively with the Ventura County LAFCo to resolve this issue. However, we do not read the California Coastal Act or Coastal Zone Management Act to require all aquaculture projects to be located in state waters. Regardless, there's currently no path forward in state waters, as the CFGC has placed a moratorium on accepting new applications for aquaculture projects in state waters.

		<p>Project Siting and Location</p>	<p>Second, Commission staff strongly believes that siting the project within State waters would result in a safer, more environmentally sustainable and responsible project that would better serve Californians.</p> <p>Currently, there is not a robust federal regulatory structure in place to review, approve and provide oversight of aquaculture projects in federal waters. Siting the project within State waters would provide an opportunity for a more thorough, transparent and stakeholder-engaged environmental review process that would include compliance with critical state laws such as the California Environmental Quality Act, the Coastal Act, the California Fish and Game Commission’s aquaculture leasing requirements, and California Department of Public Health water quality and food safety regulations. Although the regulatory burden may be higher in State waters, there is also more certainty that a project will be implemented and operated in a manner that is protective of coastal and marine resources while providing the desired public and economic benefits.</p> <p>We look forward to continuing engagement with the District on these issues and renew our commitment to working with the District to provide siting information and feedback that can lead to a successful project in State waters.</p>	<p>The most important consideration concerning site location is selecting a site that avoids or reduces environmental impacts and other issues, such as user conflicts, as much as possible. The VPD is committed to selecting a site that meets that criteria, regardless of whether that site is in federal or state waters. Note that VPD had initially proposed that the project be located in California state waters and engaged in preliminary discussions with the CFGC and CDFW. However, there was significant opposition to the originally proposed project site in state waters from halibut trawlers, who provided public comments several times that the proposed location overlapped with key trawling waters. Based upon that information and in an effort to reduce conflicts with existing users in state waters, VPD decided to move the project to federal waters.</p> <p>VPD, and all federal agencies reviewing the VSE project, respectfully disagree with the assertion that there is not a robust federal regulatory process in place to review aquaculture projects. As you are aware, the project is still subject to review by the CCC through a consistency certification, wherein the CCC determines if the project complies with Coastal Act requirements. The CCC will conduct a public hearing that allows for additional public testimony, which provides the opportunity for transparency and public engagement discussed in the comment.</p> <p>As part of the project’s review by the Corps, the project site has been informed by one of the first siting studies performed by the National Oceanic and Atmospheric Administration (“NOAA”) for an aquaculture project on the West Coast, which supplemented a previous site study performed by the UCSB Bren School. As mentioned above, NOAA has performed a similar siting analysis evaluating potential project locations in state waters. The NOAA National Centers for Coastal Ocean Science (“NCCOS”), led by Dr. James Morris, are the preeminent experts in this field, having conducted over a dozen such evaluations for aquaculture projects utilizing tools uniquely developed to evaluate aquaculture siting and potential use conflicts. Further, NOAA has access to sensitive data sources that require security clearances, such as military</p>
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				<p>information, that cannot be easily disseminated in their raw form to state agencies like the CCC and CFGC; thus, NCCOS is uniquely qualified to perform the analysis using all available data. The VSE project analysis incorporated 38 different and verifiable data layers to determine site suitability. NCCOS is also developing ground-breaking 3-D modeling technology to evaluate the potential interactions between aquaculture projects and specific species of whales. The VSE project will be one of the first projects in the country to be evaluated through this technology.</p> <p>The project must also obtain a permit from the Corps pursuant to Section 10 of the Rivers and Harbors Act. As part of that process, the Corps must consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (“NMFS”) under the ESA, the Magnuson-Stevens Fishery Conservation and Management Act (concerning essential fish habitat), and the Marine Mammal Protection Act (MMPA). NMFS has some of the preeminent experts in the country regarding marine mammal interaction and fish habitat, particularly in offshore waters. NOAA has taken a lead role in other areas to address marine mammal issues. For example, NOAA took the lead in developing protections to address right whale entanglement in crab and lobster gear in the northeast United States. Dr. Morris and his team have similarly conducted literature reviews and analysis of marine mammal entanglements in mussel aquaculture globally and developed best management practices (“BMPs”) that should be considered for such projects. Many of the measures incorporated into the VSE project were adopted from NOAA’s recommended BMPs and mitigation measures.</p> <p>The project must also be reviewed for environmental effects under the National Environmental Policy Act (“NEPA”), the federal counterpart to the California Environmental Quality Act. A state waters alternative may be included in the NEPA analysis should the Corps determine that an Environmental Impact Statement is required; however, we should note that locating a project farther from shore is often a preferred alternative to <i>reduce</i> environmental impacts, as it lessens interactions with fishing and other vessels; avoids nearshore</p>
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				<p>admission that they do not have familiarity with aquaculture practices or staff knowledgeable concerning offshore marine aquaculture issues. Indeed, a new lease has not been issued by the FGC in California waters in several decades. Therefore, it is unclear what experience the agency would currently contribute to the analysis of project impacts.</p> <p>The above comments are not intended to imply that California state agencies do not have a robust environmental review process. They do. But it is also true that the federal agencies involved in this process bring at least as much expertise in evaluating proposals for offshore aquaculture as California state agencies and their review will take place in coordination with the CCC.</p> <p>Further, the CCC’s consistency review is limited to whether the VSE project complies with the enforceable policies of the California Coastal Act and that the activities will be conducted consistent with the Coastal Act. 16 U.S.C. § 1456(c)(3)(A). The term “enforceable policies” means “policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.” 16 U.S.C. § 1453. The enforceable policies are found in Chapter 3 of the Coastal Act. There are no enforceable policies regarding how robust the federal permitting process is compared to state permitting. Indeed, if the CCC’s position is that no consistency certifications could be approved because the process is not as robust as its coastal development permit process, it would eliminate the federal consistency review process altogether, in contravention of the Coastal Zone Management Act. As noted above, the key consideration is whether the project complies with the enforceable policies. VPD continues to believe that a location outside of California state waters avoids and minimizes impacts to California marine resources, particularly as compared to a site in California state waters.</p>

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8	Commissioner Brian Brenan	General Comment	In areas where there are more mussel operations where marine mammals exist, are those entanglement numbers stable? Other areas where there are mussel farming going on and marine mammals is there an accelerated rate of entanglement?	The few mussel farms in our area have not had any entanglement issues. In other areas of the world, there have been a few entanglements but the predominant entanglement issue is slack lines and the use of spat collector ropes, neither of which will be employed in the VSE project. The majority of marine mammal populations in the Santa Barbara channel are stable. Gray whale and humpback whale populations have seen an incredible comeback in population numbers over the years after regulations were set in place pursuant to the MMPA and ESA, which can be seen in current stock assessment reports for 2018 and 2019 respectively.

9	Commissioner Jackie Gardina	Economic and Fiscal Impact	<p>Referring to SBMC comments above:</p> <p>Where does the economic estimation for the project fall in the continuum of worst to best case scenario – is the current estimation average? How was the grower cost estimation reached?</p>	<p>The Economic and Fiscal Impact was prepared by Michael Wright (Illuminas Consulting), an expert in developing financial analyses and strategies. The Economic and Fiscal Impact prepared by Mr. Wright incorporated cost estimates described in the grower proforma assembled by Scott Lindell (Woods Hole Oceanographic Institution), an expert and researcher in marine aquaculture development. The grower proforma prepared by Mr. Lindell provides a focused analysis from the perspective of the shellfish grower while the Economic and Fiscal Impact prepared by Mr. Wright incorporates the grower cost estimates and provides an analysis into the economic and fiscal effects on the VPD and the greater local economy.</p> <p>A range estimate was not prepared for the cost estimates. The proforma is calculated using static assumptions, which in turn were arrived at by examining a range of possible values informed by existing farming activities, professional quotes, and professional farming experience. The following provides a few examples of cost assumptions. For example, based on research and experience the cost of a service vessel is estimated to range from \$200,000 to \$400,000. In this case the midpoint value of \$300,000 was assumed for this cost estimate. Similarly, based on experience the annual mussel production per longline is estimated to range from 4 pounds per foot on the low end to 8 pounds per foot on the high end. In this case the midpoint value of 6 pounds per foot was assumed for this cost. Conversely, the cost for the longlines, buoys, and anchors are based on manufacture quotes coupled with professional experience to arrive at \$16,992.00 per longline based on conservative bulk pricing of 24 longlines at a time. The proforma assumes a 1 year build out with full production (assumed annual production of 585,000 pounds of mussels) beginning in Year 2. In addition, the proforma assumes 200 days on the water (e.g., harvesting) with the remaining workdays attending to boat and gear maintenance, seeding, weather-related constraints, etc. Please refer to the attachments provided in the Economic and Fiscal Impact for more details.</p>
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10	Commissioner Mike Blumenberg		<p>Referring to SBMC comments above:</p> <p>Letter was sobering which talked about some of the challenges. Recommended YouTube video of B. Friedman. Video take-aways: challenges talked about in letter are in video; and challenges of regulation. Ventura Port District is trying to help fisherman and make the project achievable by navigating regulatory requirements.</p>	Thank you for your comments and video suggestions.

11	Sam Sandove		<p>Regarding marine mammals: Brian’s appropriate question about differences about circumstances that doesn’t exist and you are comparing to east coast and other parts of the world. I have published papers on marine mammal entanglements and spent decades working with marine mammal entanglements. There was a juvenile sperm whale entangled in monofilament line a few days ago. It wasn’t able to be disentangled. In addition, there have been recent efforts of the State of California to potentially declare the leatherback sea turtle an endangered species. Although they are usually in waters further south than our region. I have seen leatherbacks in the Channel. They are more likely to be entangled than marine mammals. Laurie and team are correct in my opinion. The Port needs to consider in this process the potential of what would happen if they end up with an endangered species entanglement. If they are unable to disentangle or results in mortality, that will trigger a section 7 consultation and have a significant impact on the project for an extended or limited period of time.</p> <p>There are entanglements of other species of marine mammals. Although blue whales are concentrated near Channel Islands they are well known to swim in shallow waters. I observed whales 3 miles from the Ventura Harbor. Put into planning and thought process if you have to go through a Section 7 consultation.</p>	<p>Marine mammals and sea turtles have a high risk of entanglement in monofilament line. With respect to pinnipeds, the 2014 NOAA Marine Debris Program Report indicated that California sea lions have the highest incidence of entanglement with 70% of entanglements being due to monofilament fishing nets and line.</p> <p>With respect to cetaceans, since 2013 there has been a large increase in the overall number of whale entanglements reported along the U.S. west coast. The 2019 NOAA Fisheries West Coast Whale Entanglement Summary states that while approximately half of entanglement reports cannot be attributed to a specific source, Dungeness crab fishing gear is the most common source that has been identified during this period.</p> <p>Sea turtle entanglement is rare and there are limited reports of sea turtle entanglement in California fishing gear (Ocean Protection Council 2019). Regarding confirmed fishery-related entanglement in California, one Leatherback was confirmed as dead in unidentified fixed gear in September 2015; one Leatherback was released alive from California Dungeness crab gear by a fisherman in April 2016, and one leatherback was confirmed as dead in unidentified fishing gear in October 2019 (Ocean Protection Council 2019).</p> <p>Overall, from 2013 to 2018, when the source of entangling gear is identifiable, the majority of West Coast entanglement reports involve the commercial Dungeness crab fisheries in California, Oregon and Washington (Ocean Protection Council 2019).</p> <p>Fixed fisheries gear (e.g., pot and trap gear) is the most commonly recognized and reported gear type causing entanglements since 2000. In contrast to fishing gear, there are far fewer documented entanglement cases in mussel aquaculture gear. Interactions and entanglements with longline aquaculture gear worldwide are very rare. Mussel aquaculture gear is an entirely different setup with gear that’s not designed to catch marine species. With employing multiple mitigation</p>
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			<p>Regarding financial projections: Concern is that revenues might be more. Salaries and numbers projected by salaries are extremely “rosy”. Direct salary payment works out to be almost \$70,000 per year; indirect is over \$150,000; average combined is \$79,000, which would mean revenue would have a higher ratio because costs would be less which affects multiplier, payroll taxes, etc.</p>	<p>measures (i.e. no spat collecting ropes and maintaining a taut structure), this project aims to minimize the risk of entanglement.</p> <p>However, as noted by the commenter, the project will need to go through consultation with NMFS pursuant to the MMPA and ESA. With the incorporation of the mitigation measures proposed and based on the very low incidence of documented marine mammal entanglements in mussel aquaculture gear worldwide, there does not appear to be a significant risk of take of marine mammal species; however, NMFS will review that issue during its consultation and make its own take determination.</p> <p>Last, as noted in a comment above, there are currently ongoing discussions on the best scientific approach in balancing the need for the project structural integrity and preventing marine mammal entanglements. Any further refinements will be reflected in future updates to the Operations Plan.</p> <p>As mentioned in a comment above, the grower proforma is calculated using assumptions, which in turn were arrived at by examining a range of possible values informed by existing farming activities, professional quotes, and professional farming experience. The range for average annual staff pay <u>including benefits</u> is estimated to be \$40,000 to \$80,000. The proforma utilized a mid-point value of \$65,000 per year for the average annual staff pay (including benefits) for one person. Assuming annual employee <u>benefits</u> cost approximately \$15,000 per year per employee, this results in an hourly pay of approximately \$24 per hour (or \$50,000 per year per employee) in employee wages. The proforma assumes that an annual production of 585,000 pounds per year will require nearly 2 full-time equivalent staff (assumes 300,000 lbs. per employee). Therefore, nearly 2 full-time equivalent staff are anticipated to be required per boat. As a result, these employees need to be knowledgeable and skilled at mussel farming operations and it is anticipated the estimated pay plus benefits is the general level of compensation required to attract the skilled employees</p>
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			<p>Comment and question: the 5th circuit court that went against the NMFS recently. They determined they have no authority to issue anything regards to agriculture and the permit for that are based on the MS Act which the 5th circuit ruled doesn't include aquaculture. Its possible this may go to the Supreme Court but they may not give NMFS to give that request. EDC sent in their comments specific for this case in their footnotes. Suggest EDC letter it would be included in the minutes.</p>	<p>necessary. After another review of this assumption Mr. Lindell concludes that it is reasonable and is financially feasible within the framework and assumptions of the current proforma.</p> <p>The commenter references the recent 5th Circuit decision in <i>Gulf Fisherman's Association v. National Marine Fisheries Service</i>. That case concerned the ability of NMFS to establish its own permitting and leasing program for offshore aquaculture under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The court ruled that NMFS does not have permitting authority under the MSA. This case is inapplicable to the project. VPD is not seeking a permit from NFMS; it is seeking a permit from the Corps pursuant to its authority under Section 10 of the Rivers and Harbors Act. However, as noted above, NMFS will still have review authority under the MMPA and ESA, which was not at issue in the <i>Gulf Fishermans</i> decision.</p>

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12	Michael Wagner		<p>Doesn't understand thing on "death". Also doesn't understand statement of no entanglements on mussels because we don't have any. So mute thing to say.</p> <p>Jackie brought up a good question and it wasn't answered.</p> <p>Also, \$60-\$70K for deck hand? I have been in this industry since 1974. If you made \$40K is a lot of money. One thing you guys are overlooking and not putting credence in is an investor in this industry since 1974 you are talking \$150-200K to put a mussel farm out in federal waters.</p> <p>I told Chris almost 6 months to a year ago that we have a major humpback whale entanglement problem. I get one humpback whale engagement, which is the most popular whale, I am out of business. I mean I burned a quarter million dollars out there and there is gonna be no second chance. It will kill it. So get this thing back inland up by Carpinteria. Michael Markel told you where you could put it.</p>	<p>As mentioned in a comment above, the grower proforma is calculated using assumptions, which in turn were arrived at by examining a range of possible values informed by existing farming activities, professional quotes, and professional farming experience. See the response above related to estimated employee salaries.</p>
13	Alan DeRossett		<p>Zoom chat box comment: "Some of the costs for Shellfish farming seem to be lots of Fuel any studies on just using an electric fishing. Electric boats are now cheaper to operate. as a fleet like Norway has started."</p>	<p>See comments above regarding fiscal estimates. While electric boats are not required, any operational methods that can reduce fossil fuel emission in farm operations, such as the use of electric boats, is strongly encouraged. In utilizing these new technologies, Growers can reduce what is already considered a low carbon emission method of harvesting seafood. Indeed, as discussed by Steve Gains (Professor and Dean at University of California, Santa Barbara – Bren School of Environmental Science and Management) for the VSE Workshop hosted in 2017, compared with other forms of food production, aquaculture production has a significantly lower carbon footprint. For more information on this topic see the Archived Workshop 1 at www.venturashellfishenterprise.com.</p>