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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF HUMBOLDT

11 NATIONAL AUDUBON SOCIETY and
12 CALIFORNIA WATERFOWL ASSOCIATION,

13 Petitioners,

14 v.

15 HUMBOLDT BAY HARBOR, RECREATION AND
16 CONSERVATION DISTRICT,

17 Respondent.

18
19 COAST SEAFOODS COMPANY, and DOES I
20 through V,

21 Real Party in Interest.

Case No.

CV 170248

**VERIFIED PETITION FOR WRIT OF
MANDATE UNDER THE
CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

1 Petitioners National Audubon Society (Audubon) and California Waterfowl Association
2 (CWA) (collectively, “Petitioners”) bring this action on their own behalfs, on behalf of their
3 members, on behalf of the general public, and in the public interest and hereby allege as follows:

4 **INTRODUCTION**

5 1. On February 28, 2017, the Humboldt Bay Harbor, Recreation and Conservation
6 District (Harbor District) approved Coast Seafoods Company’s (Coast) Humboldt Bay Shellfish
7 Aquaculture Permit Renewal and Expansion Project (Project). The Harbor District certified the
8 Final Environmental Impact Report (FEIR) assessing the environmental effects of the lease renewal
9 on the same day.

10 2. The Project allows expansion of Coast’s aquaculture activities into 256 acres of
11 eelgrass and other sensitive tidelands habitat not currently developed in the northern area of
12 Humboldt Bay, known as Arcata Bay. The Project also includes permit renewal for Coast’s existing
13 aquaculture operations, allowing these operations to continue on 235.3 acres of Humboldt Bay
14 tidelands, the vast majority of which is eelgrass habitat.

15 3. Eelgrass is a habitat-forming plant species. Eelgrass habitat provides a food source
16 for wildlife, a host for smaller plants and animals that live in eelgrass beds, and a sediment stabilizer.
17 Eelgrass provides important foraging areas and shelter for young fish and invertebrates, food for
18 migratory waterfowl, and spawning surfaces for invertebrates and fish. Eelgrass is an essential
19 refuge, foraging, and spawning habitat for many marine species, including such economically
20 valuable species as salmon, Pacific herring, and Dungeness crab.

21 4. The importance of protecting eelgrass is reflected in state and federal regulations and
22 policies. California regulations prohibit cutting or disturbing eelgrass. Aquaculture leases issued by
23 the California Department of Fish and Wildlife (DFW) include explicit language stating this
24 prohibition. DFW further requires a 10-foot buffer between the eelgrass and aquaculture gear. The
25 National Marine Fisheries Service (NMFS) has a policy to protect eelgrass habitat in California, the
26 California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP), which finds that
27 eelgrass warrants strong protection because of its important biological, physical, and economic
28 values. The CEMP notes, “For all of California, compensatory mitigation should be recommended

1 for the loss of existing eelgrass habitat function, but only after avoidance and minimization of effects
2 to eelgrass have been pursued to the maximum extent practicable.” The federal Fishery
3 Management Plan for the Pacific Coast Groundfish Fishery and regulations implementing essential
4 fish habitat (EFH) designations for this fishery include Humboldt Bay as a Habitat Area of Particular
5 Concern for Estuaries and for Sea Grass. A Habitat Area of Particular Concern is an area within
6 designated EFH that serves an important ecological function, is particularly sensitive to human-
7 induced environmental degradation, is particularly stressed by human development activities, and/or
8 comprises a rare habitat type.

9 5. Despite the many ecological values of eelgrass habitat and the declining acreage of
10 eelgrass along California’s coast and along the West Coast north and south of California, the Project
11 would expand Coast’s operations into over 256 acres of Arcata Bay’s dwindling eelgrass habitat, as
12 well as adjacent mudflat habitat. The FEIR on the Project fails in a number of respects adequately to
13 analyze the Project’s impacts on eelgrass habitat and the many species that rely upon it. It further
14 fails to consider the Project’s impacts cumulatively with two other aquaculture expansion projects
15 being considered by the Harbor District that involve at least 300 additional acres of Arcata Bay and
16 with the significant decline of eelgrass habitat along the West Coast from Washington to Baja
17 California. The FEIR also fails to examine alternatives to the project that would avoid aquaculture
18 in eelgrass habitat altogether.

19 6. The importance of protecting mudflat wetlands is reflected in the 2003 Southern
20 Pacific Shorebird Conservation Plan’s priority conservation actions for Humboldt Bay, which
21 include prohibiting “further alteration of tidal flats for oyster culture.” Coastal wetlands are among
22 the most productive and ecologically important ecosystems in the world and are under increasing
23 threat globally due to anthropogenic impacts and changing environmental conditions. California has
24 lost over 70 percent of its intertidal habitat areas. California’s coastal mudflats host the densest
25 concentrations of shorebirds in the state, highlighting the critical need to protect this habitat type
26 from further modification. The bulk of the food organisms in Humboldt Bay consumed by fish and
27 birds are produced in the bay’s mudflats.

1 adjacent shores that would be affected by the Project's operations, including members who are
2 particularly interested in protecting the many native, imperiled, and sensitive species of birds, fish,
3 and other wildlife and their habitats that the Project would affect.

4 11. By this action, Audubon seeks to protect the ecological health of Humboldt Bay and
5 the interests of its members and the general public in the birds, fish, other wildlife, and other natural
6 resources of Humboldt Bay and to enforce the Harbor District's duties under CEQA. Audubon's
7 members and staff have an interest in these resources, as well as in conservation, environmental,
8 aesthetic, and economic interests in Humboldt County. Audubon's members and staff who live near,
9 work near, or visit the area where the Project would be located have a right to and a beneficial
10 interest in the Harbor District's compliance with CEQA. These interests have been, and continue to
11 be, threatened by the Harbor District's decision to certify the FEIR and approve the Project in
12 violation of CEQA. Unless the relief requested in this case is granted, Audubon's members and staff
13 will continue to be adversely affected and irreparably injured by the Harbor District's failure to
14 comply with CEQA.

15 12. Petitioner CALIFORNIA WATERFOWL ASSOCIATION was founded in 1945 (and
16 originally called Duck Hunters Association of California) to influence hunting regulations and
17 government activities that affect waterfowl in California. For 25 years it was an all-volunteer
18 organization. In the early 1980s, recognizing that the challenges its founders faced had greatly
19 expanded, CWA hired its first biologist and initiated waterfowl studies in partnership with the
20 California Department of Fish and Game (now Department of Fish and Wildlife) to determine the
21 factors that limit waterfowl populations in California and along the Pacific Flyway. Study results
22 provided the basis for habitat enhancement projects that began in 1989. CWA continues to work to
23 increase and protect waterfowl habitat in wetlands across California, to study the needs of native
24 waterfowl species, and to promote hunting. Its headquarters are in Roseville, California, and its staff
25 members work in major wetlands regions throughout the state. CWA has nearly 20,000 members
26 and approximately 1,500 active volunteers, who contribute 28,000 hours annually assisting with
27 CWA programs. CWA has more than 1,500 members and supporters who live in Humboldt County.
28 CWA's members, volunteers, supporters, and staff include individuals who regularly use and intend

1 to continue to use the areas of Humboldt Bay and the adjacent shores that would be affected by the
2 Project's operations, including members who are particularly interested in protecting the waterfowl
3 species that they hunt and their access to hunting and other recreational uses of Humboldt Bay that
4 the Project would affect.

5 13. By this action, CWA seeks to protect the health of Humboldt Bay, the waterfowl
6 populations that the bay supports, and the interests of its members and the general public in hunting
7 and boating on the bay and to enforce the Harbor District's duties under CEQA. CWA's members
8 and staff have an interest in these resources, as well as in conservation, environmental, aesthetic, and
9 economic interests in Humboldt County. CWA's members and staff who live near, work near, or
10 visit the area where the Project would be located have a right to and a beneficial interest in the
11 Harbor District's compliance with CEQA. These interests have been, and continue to be, threatened
12 by the Harbor District's decision to certify the FEIR and approve the Project in violation of CEQA.
13 Unless the relief requested in this case is granted, CWA's members and staff will continue to be
14 adversely affected and irreparably injured by the Harbor District's failure to comply with CEQA.

15 14. Respondent HUMBOLDT BAY HARBOR, RECREATION AND
16 CONSERVATION DISTRICT is a countywide agency with permit jurisdiction over all tidelands,
17 submerged lands, and other lands granted to the District, including all of Humboldt Bay. The
18 Harbor District is the lead agency responsible for environmental review of the Project and for
19 Project approval.

20 15. Real Party in Interest COAST SEAFOODS COMPANY is a business that cultivates,
21 processes, and distributes seafood in California, Washington state, and elsewhere. Coast maintains
22 an office at 25 Waterfront Drive, Eureka, California. It currently cultivates oysters and other
23 shellfish on approximately 300 acres of Humboldt Bay tidelands. Coast is the applicant for the
24 aquaculture permit renewal and expansion project that is the subject of this petition.

25 16. The true names and capacities, whether individual, corporate, or otherwise, of DOES
26 I through V are unknown to Petitioners. Petitioners will amend this Petition to set forth the true
27 names and capacities of said Doe parties when they have been ascertained. Petitioners allege that
28 each of said Does is a Real Party in Interest.

1 **JURISDICTION AND VENUE**

2 17. This Court has jurisdiction over this action pursuant to Code of Civil Procedure,
3 section 1085, or, in the alternative, pursuant to section 1094.5. Judicial review is governed by Public
4 Resources Code, section 21168.5, or, in the alternative, section 21168.

5 18. Venue is proper in this court pursuant to Code of Civil Procedure, section 393,
6 subdivision (b) because the Project is located in Humboldt County and its harmful impacts to natural
7 habitat, bird, fish, and other natural resources will occur in Humboldt County.

8 19. The Notice of Determination regarding the Harbor District’s certification of the FEIR
9 and approval of the Humboldt Bay Shellfish Aquaculture Permit Renewal and Expansion Project
10 was posted with the State Clearinghouse of the Governor’s Office of Planning and Research on
11 March 2, 2017. This action has been timely filed within 30 days of the posting of that Notice of
12 Determination, as required by Public Resources Code, section 21167, subdivision (c) and 14
13 California Code of Regulations, section 15112, subdivision (c)(1).

14 20. Petitioners have provided written notice of their intention to file this Petition to the
15 Harbor District and are including the notice and proof of service as Exhibit A pursuant to the
16 requirements of Public Resources Code, section 21167.5.

17 21. Petitioners have served the Attorney General with a copy of their Petition along with
18 a notice of its filing, in compliance with Public Resources Code, section 21167.7, and are including
19 the notice and proof of service as Exhibit B.

20 22. Petitioners do not have a plain, speedy, or adequate remedy at law because Petitioners
21 and their members will be irreparably harmed by the environmental damage caused by
22 implementation of the Project and the Harbor District’s violations of CEQA.

23 **STATEMENT OF FACTS**

24 **The Environmental Setting**

25 23. The Project includes the expansion of Coast’s oyster cultivation into 256 acres of
26 tidelands that are not currently developed. The acreage proposed for the expansion in the Project
27 includes 111.7 acres of patchy eelgrass and 127 acres of continuous eelgrass, as well as mudflat
28

1 habitat. The Project would result in an approximately 64 percent increase in Coast’s existing
2 footprint in Arcata Bay.

3 24. Humboldt Bay contains approximately 5,646 acres of eelgrass, which represents
4 between 45 and 53 percent of California’s total eelgrass. Though eelgrass is the dominant aquatic
5 plant of the shallow subtidal and lower intertidal zones in the bay, it is one of the rarest habitats in
6 California. Just five bays — Humboldt, San Francisco, San Diego, Mission, and Tomales — support
7 over 80 percent of the state’s known eelgrass. Arcata Bay hosts the largest remaining intertidal
8 eelgrass bed along the Pacific coast between Washington and Mexico.

9 25. Eelgrass populations along the Pacific coast of North America are under extreme
10 stress from disease and high water temperatures. Declines due to climate change impacts (i.e.,
11 increased temperatures and disease) have been recently reported for five of six major embayments
12 with eelgrass in California and Baja California. Eelgrass has declined in California, making any
13 continuing or additional loss in Humboldt Bay even more significant from the standpoint of both
14 local and statewide cumulative impacts. Indeed, between 2009 and 2015, eelgrass declined
15 considerably in Humboldt Bay itself. A survey that compared eelgrass conditions in Humboldt Bay
16 in those two years revealed that there was about 20 percent less eelgrass in 2015 than in 2009.

17 26. Humboldt Bay supports the last remaining expansive intertidal bed of eelgrass in
18 California (i.e., beds exposed at >-0.5 feet mean lower low water tides). The intertidal eelgrass beds
19 of all other large bays in California have been lost or degraded by human development and
20 activities. Humboldt Bay’s location in northern California, distant from other large bays, and its
21 unique combination of dense cover of intertidal and subtidal eelgrass populations create a highly
22 productive and species-diverse ecosystem.

23 27. Other Pacific bays have experienced even more significant losses of intertidal
24 eelgrass habitat. For example, Morro Bay, California has lost 96 percent of its intertidal eelgrass
25 beds since 2007, and San Quintin Bay in Baja California, Mexico has lost 45 percent of its intertidal
26 eelgrass, including nearly all of its dense cover of intertidal eelgrass, over the last decade.

27 28. Eelgrass is a habitat-forming plant species. It contributes to ecosystem functions at
28 multiple levels: as a primary producer of biomass, food source for wildlife, builder of habitat

1 structure, host for epiphytes and epifauna (small plants and animals that live on the surface of
2 eelgrass), sediment stabilizer, and nutrient cycling facilitator. Eelgrass provides important foraging
3 areas and shelter to young fish and invertebrates, food for migratory waterfowl, such as brant, a
4 native goose, and spawning surfaces for invertebrates and fish. Indeed, eelgrass is an essential
5 refuge, foraging, and spawning habitat for many marine species, including such economically
6 valuable species as salmon, Pacific herring, and Dungeness crab. Many species that depend on
7 eelgrass are highly migratory. If these species are adversely affected by the loss of habitat in
8 Humboldt Bay, the effects will be seen throughout their ranges along the California coast and
9 beyond.

10 29. Brant have been designated by DFW as a Species of Special Concern in California.
11 Brant are uniquely dependent on eelgrass habitat for survival during migration and as wintering
12 habitat. Humboldt Bay is the most important spring migration site for brant between Baja
13 California, Mexico and Willapa Bay, Washington. Humboldt Bay is also very important for many
14 other species of water birds on the Pacific Flyway, including wigeon, greater and lesser scaup,
15 pintail, canvasback, ruddy duck, surf scoter, and western grebe. Humboldt Bay has been designated
16 by the National Audubon Society and BirdLife International as an Important Bird Area of national
17 and global significance due to its importance to brant, other waterfowl, and shorebirds. The Western
18 Hemisphere Shorebird Reserve Network Hemispheric Council has designated Humboldt Bay as a
19 site of international importance to shorebirds because of its annual use by hundreds of thousands of
20 shorebirds.

21 30. Various shorebird species that occur in Humboldt Bay are designated by the U.S. Fish
22 and Wildlife Service as Birds of Conservation Concern. These include lesser yellowlegs, whimbrel,
23 long-billed curlew, marbled godwit, short-billed dowitcher, and red knot. The mudflats and eelgrass
24 beds of Humboldt Bay have extraordinary importance at local, regional, and hemispheric scales for
25 shorebirds. Large percentages of global populations of several shorebird species rely on Humboldt
26 Bay each fall and winter (for example, 23 percent of western sandpiper and ten percent of marbled
27 godwit populations visit and feed at Humboldt Bay). On the Pacific Flyway, migratory and
28 wintering sites for shorebirds continue to shrink with coastal development, reducing habitat for these

1 birds and increasing the importance of fairly intact existing sites such as the East Bay Management
2 Area in Humboldt Bay.

3 31. Pacific herring are critically important as food for salmon and other fish species,
4 cetaceans, pinnipeds, shorebirds, and seabirds. As a result, DFW’s statewide herring commercial
5 fishery program requires that management measures safeguard herring as an important forage
6 species for all species in marine and estuarine ecosystems that rely on herring as a food source.
7 Recent analyses of predator diets in the California Current System (British Columbia through Baja
8 California) highlight the importance of herring to predators. For 32 predator species evaluated in
9 this region, Pacific herring ranks as the fourth most significant prey species out of a total of 27 prey
10 species. Humboldt Bay is the third most important herring spawning site in California, after San
11 Francisco Bay and Tomales Bay. Herring spawn on the surface of eelgrass leaves.

12 **The Project and Its Potential Environmental Effects**

13 32. On February 28, 2017, the Harbor District voted to grant Permit 14-03 for Coast’s
14 operations under the Project. This permit authorizes “Continued and expanded aquaculture
15 operations in Humboldt Bay, California as more particularly described as the East Bay Management
16 Area (EBMA) Avoidance Alternative (Environmentally Superior Alternative) in the Environmental
17 Impact Report.”

18 33. The Project as approved involves renewing regulatory approvals for Coast’s existing
19 shellfish culture activities on 300 acres and expanding operations in Arcata Bay into 256 acres not
20 currently used for aquaculture. The expansion is proposed to take place in two phases: 165.2 acres
21 in Phase I and 90.8 acres in Phase II. The Phase I expansion area would include 89.2 acres of
22 double-hung, 10-foot spaced cultch-on-longline; 71.9 acres of basket-on-longline with two rows of
23 baskets separated by 9 feet, followed by a 16-foot space; and up to 4 acres of rack-and-bag and/or
24 basket-on-longlines. The Phase II expansion area would include up to 90.8 acres of either double-
25 hung cultch-on-longline or basket-on-longline, at the same spacing intervals described for these
26 cultivation methods above. The Project proposes to mitigate for eelgrass impacts by removing one
27 acre of aquaculture gear from its existing footprint for every four acres of previously uncultivated
28 habitat affected by the expansion. The Project thus purports to provide 42 acres of mitigation for

1 Phase I that would occur within the first 3 years of the project and 22.7 acres of mitigation for the
2 90.8-acre Phase II expansion.

3 34. Each of the culture methods included in the Project involves installation and
4 maintenance of a significant amount of gear. The cultch-on-longline method involves driving rows
5 of PVC stakes into the bottom and hanging bags of oyster seed on longlines between the stakes. The
6 bags are suspended approximately one foot above the bay bottom. Longlines are planted at low tide
7 by crew walking on the bay bottom. Due to the infrequency of adequately low tides, the planting
8 crew works every available low tide. Planted areas are inspected monthly by workers walking on
9 the bottom at low tide. Oysters are harvested 18 to 36 months after planting.

10 35. Basket-on-longline culture uses baskets suspended on monofilament line tied between
11 PVC pipes. The baskets are suspended roughly one foot from the bottom during low tides. This
12 method requires frequent inspection and maintenance, with crews visiting a basket-on-longline plot
13 nearly every day.

14 36. Rack-and-bag culture involves growing individual oysters in polyethylene mesh bags
15 on rebar frames. Each frame measures about three by twelve feet and supports three to six bags
16 seeded with oysters. The bags are inspected up to three times per week and flipped approximately
17 once every two weeks. Oysters are harvested in one to two years. For all methods, visiting,
18 inspecting, maintaining, and harvesting plots involves both boat trips and trampling from walking on
19 the bay bottom (eelgrass or mudflat).

20 37. In all, the Project includes approximately 256 acres of new installation and operation
21 and approximately 235 acres of continued operations for a total of 491 acres, a 64 percent increase
22 from the 300 acres currently permitted.

23 38. The Harbor District is also considering two other aquaculture expansion projects in
24 sensitive intertidal habitats in Arcata Bay that would cover approximately 237 acres and 63 acres,
25 respectively, which would cumulatively expand aquaculture in this area to 791 acres. A Notice of
26 Preparation of a draft EIR issued by the Harbor District on March 23, 2017 states that approximately
27 329 acres of Humboldt Bay not currently developed for aquaculture are being considered for
28 aquaculture expansion, which would expand aquaculture in Arcata Bay to 820 acres.

1 **Impacts to Eelgrass and Species That Depend on Eelgrass**

2 39. The Project’s 256-acre expansion area would include 238.7 acres of eelgrass habitat.
3 Oyster aquaculture operations are known to adversely affect eelgrass through shading it from
4 sunlight it needs to grow, trampling, sedimentation and erosion, anchoring, and boat scarring.

5 40. Scientific research conducted in Humboldt Bay shows that installation and operation
6 of oyster longlines spaced 10 feet apart – the most conservative spacing proposed for the Project –
7 reduces the areal extent of eelgrass (also referred to as spatial cover) by 45 to 58 percent and eelgrass
8 density by 45 to 67 percent. More narrow spacing, like that used in the Project’s existing footprint,
9 results in even higher reduction in the spatial cover and density of eelgrass.

10 41. Reductions in eelgrass habitat are likely to cause significant harm to the many species
11 that depend on eelgrass for food, shelter, and spawning and nursery areas.

12 42. The Pacific Fishery Management Council (“Council”) has expressed concerns about
13 the Project’s impacts to eelgrass habitat and associated adverse impacts to groundfish (fish that live
14 on or near the bottom of water they inhabit), salmonids, and coastal pelagic species (a classification
15 of fish that includes sardine, anchovy, and mackerel) and has recommended that the Project avoid
16 eelgrass altogether.

17 43. The Project is likely to have significant negative impacts on herring spawning, thus
18 harming herring themselves as well as the many birds and other wildlife that feed on herring roe.
19 Herring spawn in limited areas in California, with Humboldt Bay being the third largest population
20 of spawning herring out of approximately twelve sites where herring are known to spawn in the
21 state. The FEIR assumes that the Project will not affect herring spawning because Coast has not
22 observed spawning on or around its existing aquaculture gear in Humboldt Bay. However, the FEIR
23 fails to account for the likelihood that this lack of observations indicates that herring avoid using
24 aquaculture beds for spawning.

25 44. Reports that herring are not spawning on aquaculture gear in the existing operation
26 footprint are consistent with other scientific evidence. While herring will to some extent spawn on
27 hard natural and artificial substrates, such as unsilted gravel and pilings, artificial surfaces do not
28

1 provide the same quality spawning habitat as eelgrass. In Puget Sound, researchers found that
2 herring spawning activity ceased in areas where eelgrass meadows had disappeared.

3 45. Expanding operations over a substantially larger area in Arcata Bay could thus
4 preclude herring from using that area for spawning. DFW data not accounted for in the FEIR show
5 that the Project would overlap with 18 percent of herring spawning habitat in Arcata Bay,
6 significantly more than the 4.5 percent overlap reported in the FEIR.

7 46. Reduced herring spawning activity would reduce the food supply for numerous fish
8 and wildlife species. Herring and their eggs are critically important as prey for salmon and other fish
9 species, whales and porpoises, sea lions and seals, shorebirds, and seabirds.

10 47. Reducing and altering eelgrass habitat could significantly harm salmonid species such
11 as coho salmon, Chinook salmon, steelhead trout, and coastal cut-throat trout. These species use
12 eelgrass habitat as foraging grounds and shelter from predators. Chinook and coho salmon
13 populations are protected under the state and federal Endangered Species Acts, and coho populations
14 have been declining. Further impacts to these populations could put them in deeper danger of
15 extinction.

16 48. Reduced eelgrass abundance would also harm brant by decreasing these geese's food
17 supply, decreasing their ability to gain mass to carry them through migration and increasing the time
18 they need to spend finding food before they continue their migration. Reducing the brant's food
19 supply during winter could impair adults' ability to breed and decrease the brant population.

20 49. Reduced grazing by brant could actually harm eelgrass meadows. Researchers have
21 found a symbiotic relationship between moderate grazing and improved eelgrass growth. A
22 significant reduction in brant grazing time is thus likely to impact the long-term health of eelgrass
23 beds in Arcata Bay.

24 50. Reduced eelgrass abundance would also harm numerous other waterfowl species that
25 depend on eelgrass for food, including American wigeon, pintail, mallard, and green-winged and
26 cinnamon teal, ducks that feed on eelgrass seeds and small invertebrates that live in eelgrass.

1 **Impacts from Increased Disturbance Associated with Aquaculture Operations**

2 51. The increased boat traffic associated with the Project would significantly increase
3 disturbance of shorebirds and waterfowl and significantly interfere with waterfowl hunting. The
4 Project would increase the time when boats associated with aquaculture activities are traversing and
5 near areas used by these birds by 68 hours per week. This represents a 31 percent increase in boat
6 traffic hours per week from current levels. Moreover, the only mitigation intended to limit flushing
7 of waterfowl by Coast’s boats is during the brant season (which was 30 days in 2016), although the
8 overall season for ducks and other waterfowl typically lasts 95 to 100 days. Even the limited
9 mitigation provided in the FEIR only requires avoidance of “intentionally” flushing waterfowl, a
10 highly subjective standard. Yet the FEIR, without adequate explanation, suggests that disturbance
11 will only increase by one percent with implementation of the Project. The FEIR thus fails to
12 evaluate the impacts of significantly increased boat traffic on waterfowl, shorebirds, and hunting,
13 even though the Project overlaps substantially with areas used by brant and other waterfowl for
14 foraging and resting.

15 52. Brant are particularly sensitive to noise and other disturbance and are known to
16 abandon areas where they are subjected to persistent sources of disturbance like vessel operations
17 associated with aquaculture. Both the U.S. Fish and Wildlife Service and an independent expert in
18 brant biology submitted comments noting that in some months brant use Arcata Bay more than other
19 portions of Humboldt Bay, that they may already be negatively affected by disturbance, and that any
20 increase in disturbance would likely reduce the birds’ ability to gain weight needed to complete their
21 migration and increase the time they need to spend feeding before continuing migration.

22 53. Many other bird species are also highly susceptible to disturbance and unlikely to
23 habituate to it. These species include wigeon, greater and lesser scaup, goldeneye, surf scoter,
24 canvasback, ruddy duck, grebes, mergansers, and loons.

25 **Interference with Various Species’ Feeding and Movement Associated with**
26 **Aquaculture Gear in Eelgrass and Mudflat Habitats**

27 54. The installation of aquaculture gear is likely to interfere with brant feeding in that
28 area. The FEIR acknowledges that brant avoid feeding, walking in, or flying through longline plots

1 at low tides — the times at which they actively forage — but incorrectly asserts that impacts to brant
2 would be less than significant because brant can use areas of eelgrass elsewhere in Humboldt Bay.
3 This assertion ignores that brant choose certain locations over others due to their proximity to
4 gritting sites and other preferred habitat sites.

5 55. Many shorebird species also avoid structured habitat like that formed by oyster
6 aquaculture gear. These species depend on unimpeded mudflat and eelgrass habitat to feed where
7 they are able to detect and avoid predators. The Project would all but exclude a number of important
8 shorebird species from critical feeding and migratory stopover grounds in Arcata Bay, including the
9 western sandpiper, dunlin, marbled godwit, and long-billed curlew. Most of these species are
10 already declining, largely due to habitat loss along their migratory routes.

11 56. The addition of aquaculture gear into previously unimpeded areas could increase
12 predation on juvenile salmonids migrating to the ocean through Humboldt Bay, as well as impede
13 movement and foraging by sturgeon.

14 **Broader Environmental Context of Project Impacts**

15 57. Negative effects of the Project on migratory fish and wildlife species would be felt
16 not just in Humboldt Bay, but along the entire West Coast and well out into the Pacific Ocean. The
17 migratory species affected would include herring and salmon; species — like humpback whales and
18 orcas — that prey on herring and salmon; brant and other waterfowl; and numerous shorebird
19 species.

20 58. Climate change impacts will likely exacerbate adverse effects to eelgrass and mudflat
21 habitats and the species they support. Climatic conditions have already led to declines in eelgrass on
22 the West Coast. Sea level rise is likely to inundate mudflats and submerge eelgrass meadows in
23 water too deep to allow adequate sunlight and growth. As a result, both habitat types are likely to
24 become less available to the species that depend on them. In addition, eelgrass habitat has already
25 declined elsewhere along the West Coast, making further loss in Humboldt Bay even more
26 significant to the many species that depend on oases of eelgrass habitat as they migrate, feed, and
27 breed.

28

1 **Impacts to Recreational Uses**

2 59. By disturbing birds, limiting their food availability and breeding success, and
3 decreasing the numbers of various waterfowl and shorebird species, the Project would harm
4 birdwatching and hunting in Humboldt Bay and other areas where these birds stop during their
5 migrations.

6 60. In addition, the installation of aquaculture gear over another 256 acres, as well as the
7 Project’s increased boat trips and management activities, would significantly limit areas that are
8 available and safe for recreational watercraft use. Many people use small watercraft for recreation
9 on the bay, including hunting, paddling, clamming, birdwatching, and other purposes. The presence
10 of aquaculture gear in this area already increases the difficulty of navigating safely, especially in
11 poor weather, low lighting, or tidal conditions in which gear just below the surface is not visible.
12 These problems are exacerbated for hunters using skull boats, who must approach their quarry with
13 the sun at their backs and thus already face navigational challenges. Any increase in the areal extent
14 of operations would increase these navigational hazards.

15 **The Project Approval Process**

16 61. Since 2006, Coast has operated on 300 acres in the North (Arcata) and Central bays
17 of Humboldt Bay, using off-bottom culture methods. These operations were approved pursuant to a
18 Mitigated Negative Declaration (rather than a full EIR), Harbor District Permit 04-03, U.S. Army
19 Corps of Engineers (Corps) Permit No. 26912N, and California Coastal Commission Coastal
20 Development Permit E-06-003. At least some of these permits were for ten years of operations and
21 have either expired or are nearing expiration. Coast is currently conducting its existing operations
22 pursuant to short-term extensions of some or all of these permits. The Project includes an extension
23 of the Harbor District Permit for existing operations, with some modifications, as well as Harbor
24 District approval of expansion into areas not currently used for aquaculture.

25 62. The Harbor District released a Notice of Preparation (NOP) of Draft EIR regarding
26 the Project on August 21, 2015. The NOP noted that a CEQA-required Initial Study of Coast’s
27 proposed Project led to a determination that an EIR was warranted and briefly described the Project
28 (largely as set forth in paragraph 33 above). Audubon and CWA were among the parties that

1 commented upon the Draft Initial Study, stressing the need for an EIR on the Project. The NOP
2 invited public agencies, organizations, and individuals to submit comments on the scope of the EIR,
3 i.e., what environmental impacts it should address. The NOP set the deadline for comments
4 regarding the EIR's scope as September 21, 2015 or within thirty days of receipt of the NOP by
5 certified mail, whichever date was later. Audubon and CWA had already raised their concerns about
6 issues that should be addressed in the EIR in their respective comments on the Draft Initial Study.

7 63. On October 26, 2015, the Harbor District released the Draft EIR (DEIR) on the
8 Project. The DEIR was circulated for public review for 45 days, during which time comments on
9 the DEIR could be submitted to the Harbor District. The comment period was later extended until
10 approximately December 31, 2015 at the request of the Pacific Fishery Management Council.
11 Audubon submitted extensive comments on the DEIR to the Harbor District on December 21, 2015,
12 within the extended comment period, detailing numerous informational gaps and inadequacies in the
13 DEIR's analyses of the significant environmental impacts that the Project would threaten to eelgrass
14 habitat, bird and fish species, and other sensitive resources and the DEIR's failure to avoid or
15 mitigate to levels of insignificance various significant environmental impacts posed by the Project.
16 Audubon's comments noted the DEIR's failure to analyze the Project's cumulative impacts with
17 other aquaculture expansion proposals in Humboldt Bay and its cumulative impacts on dwindling
18 eelgrass habitat along the entire West Coast. Audubon's comments also criticized the DEIR's
19 failure to examine an alternative that would entirely avoid the expansion of Coast's aquaculture into
20 eelgrass habitat.

21 64. On July 19, 2016, the Harbor District released a Revised Draft EIR (RDEIR), which
22 presented a modified version of the Project and purported to substantially revise the DEIR's analysis
23 of the Project's impacts to eelgrass and other resources. Comments on the RDEIR were initially due
24 by September 1, 2016, a period subsequently extended by the Harbor District until September 16,
25 2016. On September 16, 2016, Audubon submitted detailed comments addressing the continuing
26 inadequacies of the RDEIR's analyses of numerous significant impacts that the modified version of
27 the Project threatened to dwindling eelgrass habitat, various birds, fish, and other species and to
28 recreational uses of Arcata Bay, the RDEIR's failure to address cumulative impacts, and its failure to

1 consider an alternative to the Project that would avoid expansion into eelgrass habitat altogether.
2 Also on September 16, 2016, CWA, in conjunction with other hunting and wetlands protection
3 groups, submitted comments addressing the inadequacies of the RDEIR, including its failures to
4 adequately address the Project’s impacts on brant and other waterfowl, on hunting for waterfowl,
5 and on recreational boating on Arcata Bay and the inadequacy of mitigation measures proposed to
6 address various significant impacts of the Project.

7 65. On December 28, 2016, the Harbor District released the Final EIR. While there was
8 no formal public comment period on the FEIR, on January 18, 2017, Audubon submitted comments
9 to the Harbor District regarding the FEIR’s failure in numerous respects to adequately reveal and
10 analyze the Project’s significant impacts on eelgrass, various bird, fish, and other species, and other
11 natural resources, its failure to use the best available science in conducting its analyses, its offering
12 conclusions that the Project would have no significant environmental impacts, with no substantial
13 evidence upon which to base such conclusions, and its failures to look at the Project’s impacts when
14 considered cumulatively with Coast’s continuing activities, with other aquaculture expansions under
15 active consideration by the Harbor District, and in the context of the ongoing significant loss of
16 eelgrass habitat all along the California coast and the West Coast north and south of California.

17 66. On February 28, 2017, the Harbor District certified the FEIR and approved the
18 Project. A Notice of Determination of this certification and approval was posted with the State
19 Clearinghouse of the Governor’s Office of Planning and Research on March 2, 2017, triggering the
20 30-day period in which an action challenging the adequacy of the FEIR must be brought. (Pub.
21 Resources Code, § 21167, subd. (c).)

22 **CEQA LEGAL BACKGROUND**

23 67. The California Environmental Quality Act, Public Resources Code, §§ 21000-21177,
24 is a comprehensive statute designed to provide for long-term protection of the environment. CEQA
25 is designed to inform decision-makers and the public about the potential significant environmental
26 effects of a project. (Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (the regulations at tit. 14, §§
27 15000 *et seq.* are hereinafter cited as “CEQA Guidelines”).) Such disclosure ensures that “long term
28

1 protection of the environment . . . shall be the guiding criterion in public decisions.” (Pub.
2 Resources Code, § 21001, subd. (d).)

3 68. The EIR is the “heart” of this requirement. (*No Oil, Inc. v. City of Los Angeles*
4 (1974) 13 Cal.3d 68, 84.) The EIR has been described as “an environmental ‘alarm bell’ whose
5 purpose it is to alert the public and its responsible officials to environmental changes before they
6 have reached ecological points of no return.” (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795,
7 810.)

8 69. CEQA requires that an “EIR must demonstrate that the significant environmental
9 impacts of the proposed project were adequately investigated and discussed and it must permit the
10 significant effects to be considered in the full environmental context.” (CEQA Guidelines, § 15125,
11 subd. (c).) CEQA defines “significant effect on the environment” as “a substantial, or potentially
12 substantial, adverse change in the environment.” (Pub. Resources Code, § 21068.) In addition, an
13 EIR “must include a description of the physical environmental conditions in the vicinity of the
14 project, as they exist at the time the notice of preparation is published...or...at the time the
15 environmental analysis is commenced, from both a local and regional perspective.” (CEQA
16 Guidelines, § 15125, subd. (a).)

17 70. Notably, CEQA requires analysis of effects on “ecosystems,” the boundaries of which
18 are not defined by state lines. (CEQA Guidelines, § 15358, subd. (a)(2).) Therefore, the EIR must
19 analyze environmental effects occurring both within California and beyond it. Indeed, as CEQA is
20 “to be interpreted in such manner as to afford the fullest possible protection to the environment
21 within the reasonable scope of the statutory language,” the Project must be analyzed not only in
22 terms of its effects in and around Humboldt Bay, but throughout the Pacific Flyway and California
23 Current Large Marine Ecosystem, given the significant impacts that it poses to many migratory and
24 wide-ranging species that regularly occur in these zones. (CEQA Guidelines, § 15003, subd. (f).)

25 71. CEQA requires that an EIR address cumulative impacts “when the project’s
26 incremental effect is cumulatively considerable.” (CEQA Guidelines, § 15130.) The EIR must
27 therefore identify all existing and likely future projects that would cumulatively contribute to the
28 impacts of the proposed project. Cumulative impacts are defined as “two or more individual effects

1 which, when considered together, are considerable or which compound or increase other
2 environmental impacts.” (CEQA Guidelines, § 15355.)

3 72. An EIR’s conclusions regarding project impacts must be based on a full analysis of
4 relevant factors and the best available information. A conclusion regarding the significance of an
5 environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA’s
6 informational goal. (*Stanislaus Natural Heritage Project v. Cnty. of Stanislaus* (1996) 48
7 Cal.App.4th 182, 196-197.) Furthermore, CEQA requires an agency to “use its best efforts to find
8 out and disclose all that it reasonably can.” (CEQA Guidelines, § 15144.)

9 73. In addition, CEQA directs public agencies to avoid or reduce environmental damage
10 whenever feasible by requiring changes in projects through the use of alternatives or mitigation
11 measures. (See CEQA Guidelines, § 15002, subs. (a)(2) and (3); see also *Citizens of Goleta Valley*
12 *v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564-565; *Laurel Heights Improvement Ass’n v. Regents*
13 *of Univ. of Cal.* (1988) 47 Cal.3d 376, 400.) The analysis of alternatives to the proposed project lies
14 at “[t]he core of an EIR.” (*Citizens of Goleta Valley*, 52 Cal.3d at 564.) In this analysis, the EIR
15 must consider a reasonable range of alternatives that would avoid or substantially lessen this impact
16 while feasibly attaining most of the Project’s basic objectives. (Pub. Resources Code, § 21100,
17 subd. (b)(4); CEQA Guidelines, § 15126.6, subd. (a).) Alternatives identified should “offer
18 substantial environmental advantages over the project proposal.” (*Citizens of Goleta Valley*, 52 Cal.
19 3d at 566.)

20 **FIRST CAUSE OF ACTION**
21 **(Violation of CEQA – Failure to Analyze Cumulative Impacts)**

22 74. Petitioners incorporate herein by reference the allegations contained in the foregoing
23 paragraphs.

24 75. An EIR must discuss the cumulative impacts of a project when the project’s
25 incremental effects are “cumulatively considerable.” (Pub. Resources Code, § 21083, subd. (b)(2);
26 CEQA Guidelines, § 15130, subd. (a).) “Cumulatively considerable” means that “the incremental
27 effects of an individual project are significant when viewed in connection with the effects of past
28

1 projects, the effects of other current projects, and the effects of probable future projects.” (Pub.
2 Resources Code, § 21083, subd. (b)(2); CEQA Guidelines, § 15065, subd. (a)(3).)

3 76. The EIR at issue in this case failed to consider or discuss properly the Project’s
4 cumulative impacts. Among its shortcomings in this regard:

- 5 a) The FEIR failed to consider the impacts of Coast’s proposed expansion of
6 aquaculture infrastructure and aquaculture management and harvest activities into
7 256 acres of currently undeveloped eelgrass and mudflat habitat cumulatively with
8 the impacts of its continued cultivation, management, and harvest of shellfish on
9 235.3 acres of eelgrass habitat in the area where it already operates. These activities
10 cumulatively pose significant impacts to eelgrass habitat and the many species that
11 depend on it. The FEIR’s assertions that consideration of the impacts associated with
12 Coast’s existing operations is unwarranted under CEQA ignores CEQA’s clear
13 requirement that all cumulative impacts be considered.
- 14 b) The FEIR failed to consider the impacts of Coast’s activities described in
15 subparagraph (a) of this paragraph cumulatively with the impacts of two other
16 aquaculture expansion projects proposed for Arcata Bay that are under consideration
17 for approval by the Harbor District, which would cover approximately 237 acres and
18 63 acres, respectively, and which, cumulatively with the Project, would expand
19 aquaculture in Arcata Bay to 791 acres, a more than 163% increase in the total
20 acreage of aquaculture currently permitted in the bay, the vast majority of it in
21 eelgrass and mudflat habitat. More recent figures from the Harbor District indicate
22 that the District is considering an aquaculture expansion of 329 acres, which would
23 expand Arcata Bay aquaculture to 820 acres.
- 24 c) The FEIR failed to consider the impacts of further loss of eelgrass habitat and related
25 declines in herring spawning and abundance in Humboldt Bay caused by the Project
26 cumulatively with the ongoing declines in eelgrass habitat and herring along the
27 California coast and the West Coast to the north and south of California. These
28 declines collectively threaten eelgrass-dependent bird species that migrate along the

1 Pacific Flyway, pinnipeds, cetaceans, fish, and other species that prey on herring, and
2 the overall health of the California Current Large Marine Ecosystem, which extends
3 from British Columbia to Baja California.

4 77. By certifying an EIR which failed to properly analyze cumulative impacts, the Harbor
5 District committed a prejudicial abuse of discretion, failed to proceed in the manner required by law,
6 and acted without substantial evidentiary support.

7 **SECOND CAUSE OF ACTION**
8 **(Violation of CEQA – Failure to Adequately Disclose and Evaluate**
9 **the Project’s Significant Environmental Effects)**

10 78. Petitioners incorporate herein by reference the allegations contained in the foregoing
11 paragraphs.

12 79. CEQA requires that an EIR describe the proposed project’s significant environmental
13 effects; each such effect must be revealed and fully analyzed in the EIR. (Pub. Resources Code,
14 §§ 21100, subd. (b), 21002.1; CEQA Guidelines, § 15126.2, subd. (a).) “Significant effect on the
15 environment” refers to substantial, or potentially substantial, adverse changes in physical conditions.
(Pub. Resources Code, §§ 21068, 21060.5; see also Pub. Resources Code, § 21100, subd. (d).)

16 80. The CEQA Guidelines further require that, in discussing the environmental effects of
17 a project, an EIR should provide an analytically complete and coherent explanation of its
18 conclusions and contain “a sufficient degree of analysis to provide decisionmakers with information
19 which enables them to make a decision which intelligently takes account of environmental
20 consequences.” (CEQA Guidelines, § 15151.) An EIR should include “a good faith effort at full
21 disclosure.” (*Ibid.*)

22 81. The FEIR failed to adequately evaluate and adequately respond to public comments
23 concerning a variety of significant environmental effects of the Project, including the Project’s
24 direct, indirect, and cumulative impacts. For example:

- 25 a) By using an inaccurate and unsubstantiated estimate of the extent to which the Project
26 would reduce eelgrass density and spatial extent, the FEIR vastly underestimated
27 effects on both eelgrass habitat and the many species that depend on it for food,
28 shelter, foraging, and breeding. The FEIR based its assertion that the Project will

1 have less than significant effects on eelgrass on a misinterpretation of relevant studies
2 and an invalid assumption that eelgrass impacts will only occur directly under the
3 aquaculture gear. However, relevant studies show that adverse effects on eelgrass
4 density and spatial extent occur throughout aquaculture plots when new gear is
5 installed. The FEIR failed to take these studies properly into account, to provide
6 substantial evidence that it has interpreted these studies correctly, and to analyze
7 impacts according to the best available science.

- 8 b) The FEIR’s unsubstantiated “width of effect” analysis of impacts to eelgrass
9 underlies most of its impact assessments, leading to invalid and unsubstantiated
10 conclusions about the Project’s impacts on eelgrass-dependent waterfowl such as
11 brant, on numerous fish species including herring and salmonids, and on shorebirds.
- 12 c) The FEIR failed to address adverse impacts to eelgrass from significantly increasing
13 the use of basket-on-longline gear, which would increase impacts from shading and
14 require more frequent boat trips and maintenance activities, increasing the scarring
15 and trampling of eelgrass habitat.
- 16 d) In addition to underestimating impacts to eelgrass habitat for Pacific herring and other
17 fish species, the FEIR failed to consider or adequately analyze impacts of
18 significantly expanding the footprint of aquaculture gear in Arcata Bay on herring
19 spawning in light of evidence that herring avoid spawning on aquaculture gear. In
20 addition, the FEIR failed to offer support for its assertion that the Project will result in
21 only a minor decreases in egg survival and the herring population as a whole.
- 22 e) The FEIR failed to adequately analyze or disclose the Project’s local and population-
23 level impacts on brant, in terms of degrading eelgrass habitat, preventing brant from
24 using areas with new aquaculture infrastructure, and significantly increasing
25 disturbance in areas that brant use for feeding, gritting, and resting.
- 26 f) The FEIR’s conclusion that the Project will have less than significant impacts on
27 shorebirds is contradicted by the very studies the EIR cites. These studies show that
28 aquaculture expansion and associated degradation of habitat is likely to harm

1 important shorebird species, such as western sandpiper and dunlin, and result in an
2 overall decrease in shorebird numbers and diversity.

- 3 g) The FEIR failed to adequately analyze or address significant impacts to recreational
4 use of Arcata Bay, including the navigational hazards posed by the 256 additional
5 acres of aquaculture gear, loss of access to these areas for recreational boating,
6 hunting, fishing, and birdwatching, and loss of hunting opportunity associated with
7 local and population-level impacts to brant and other game birds.

8 82. By certifying an FEIR that failed to fully analyze the Project’s significant
9 environmental impacts, the Harbor District committed a prejudicial abuse of discretion, failed to
10 proceed in the manner required by law, and acted without substantial evidentiary support. Thus,
11 Harbor District findings that the Project will not have significant environmental impacts lack
12 evidentiary support.

13 **THIRD CAUSE OF ACTION**
14 **(Violation of CEQA – Failure to Consider, Discuss, and Adopt Mitigation Measures**
15 **to Minimize Significant Environmental Impacts)**

16 83. Petitioners incorporate herein by reference the allegations contained in the foregoing
17 paragraphs.

18 84. Identification and discussion of proposed mitigation measures are core requirements
19 of CEQA. A basic purpose of CEQA is to “[p]revent significant, avoidable damage to the
20 environment by requiring changes in projects through the use of alternatives or mitigation
21 measures.” (CEQA Guidelines, § 15002, subd. (a)(3); see also CEQA Guidelines, § 15021, subd.
22 (a)(1).) Government agencies “shall mitigate or avoid the significant effects on the environment.”
23 (Pub. Resources Code, § 21002.1, subd. (b).) “Formulation of mitigation measures should not be
24 deferred until some future time.” (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

25 85. The FEIR failed to consider, discuss, or adopt adequate mitigation measures. For
26 example:

- 27 a) The FEIR fails to include adequate mitigation for the loss of eelgrass habitat. The
28 FEIR uses a 4 to 1 ratio for mitigating impacts to eelgrass in the 256-acre expansion
area, meaning it proposes to remove aquaculture gear from one acre of eelgrass

1 habitat within the existing footprint of aquaculture operations in Arcata Bay for every
2 four acres of eelgrass adversely affected by the expansion. This ratio does not
3 comply with state and federal policies requiring projects to result in “no net loss” of
4 eelgrass habitat and recommending that compensatory mitigation only be used after
5 avoidance and minimization of impacts to eelgrass have been pursued to the
6 maximum extent practicable.

- 7 b) The FEIR’s mitigation measure pertaining to eelgrass availability for brant is vague
8 and uncertain. The FEIR states that “[i]f monitoring data demonstrate that eelgrass
9 impacts are above the Project’s adaptive management thresholds and additional
10 mitigation is implemented, the mitigation provided eelgrass must be available to
11 black brant.” This measure does not guarantee that *any* mitigation will be provided
12 even if the so-called adaptive management thresholds are exceeded and thus is not
13 sufficient to mitigate impacts on brant.
- 14 c) The FEIR’s mitigation measure pertaining to herring spawning is unlikely to yield
15 any significant benefit because herring appear to avoid spawning on aquaculture gear
16 altogether. The measure requires Coast employees to survey aquaculture gear for
17 signs of herring spawning and eggs during the spawning season and suspend
18 operations in any area where herring are observed spawning on the equipment.
19 However, this mitigation measure has already been required for existing operations,
20 and Coast has never reported any spawning activity on or around its gear. Expanding
21 operations would thus expand the area from which spawning herring are effectively
22 excluded, and that impact would not be mitigated at all.
- 23 d) The FEIR fails to offer any effective mitigation measures to compensate for increased
24 disturbance to waterfowl and shorebirds or decreased access to Arcata Bay for
25 hunting, birdwatching, and navigation.

26 86. By certifying the FEIR without mitigating the Project’s significant environmental
27 impacts, the Harbor District committed a prejudicial abuse of discretion, failed to proceed in the
28 manner required by law, and acted without substantial evidentiary support.

1 **FOURTH CAUSE OF ACTION**
2 **(Violation of CEQA – Failure to Consider Reasonable Range of Alternatives)**

3 87. Petitioners incorporate herein by reference the allegations contained in the foregoing
4 paragraphs.

5 88. The EIR must consider a reasonable range of alternatives that would avoid or
6 substantially lessen a proposed project’s significant environmental impacts while feasibly attaining
7 most of the project’s basic objectives. (Pub. Resources Code, § 21100, subd. (b)(4); CEQA
8 Guidelines, § 15126.6, subd. (a).) Alternatives identified should “offer substantial environmental
9 advantages over the project proposal.” (*Citizens of Goleta Valley*, 52 Cal. 3d at 566.)

10 89. The FEIR failed to consider a reasonable range of alternatives and failed to support
11 adequately its conclusions to reject from consideration proposed alternatives that would have
12 significantly reduced or eliminated the Project’s significant impacts. This failure to consider in
13 detail any alternative to the Project that would be located entirely outside eelgrass habitat or that
14 would be situated so as to reduce significant impacts to resting and feeding birds and other wildlife
15 from aquaculture operations to levels of insignificance precluded the Harbor District’s and the
16 public’s informed consideration of an adequate range of alternatives.

17 90. The RDEIR arbitrarily rejected two environmentally superior alternatives, the
18 Eelgrass Avoidance Alternative and the Avoidance of East Bay Management Area Alternative, as
19 infeasible, without providing any evidence demonstrating their infeasibility. While these
20 alternatives might reduce the profitability of Coast’s operations, that is not a valid basis to reject
21 them as infeasible. And, although the FEIR identified as the preferred alternative an alternative
22 called the “EBMA Avoidance Alternative,” this alternative does not avoid the East Bay Management
23 Area but allows substantial operations in this ecologically sensitive area and in fact intensifies
24 management activities in this area by changing to cultivation methods that require significantly
25 increased maintenance.

26 91. In failing to consider alternatives in the FEIR that would substantially reduce the
27 Project’s significant impacts, the Harbor District committed a prejudicial abuse of discretion, failed
28 to proceed in the manner required by law, and acted without substantial evidentiary support.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioners pray for judgment as set forth below:

3 A. For a writ of mandate or peremptory writ issued under the seal of this Court and
4 directing the Humboldt Bay Harbor, Recreation and Conservation District to:

- 5 1. Void the FEIR for the Coast Seafoods Company’s Humboldt Bay Shellfish
6 Aquaculture Permit Renewal and Expansion Project approval;
7 2. Set aside and withdraw approvals of the Project; and
8 3. Refrain from granting any further approvals for the Project until the Harbor
9 District complies fully with the requirements of CEQA.

10 B. For Petitioners’ fees and costs, including reasonable attorneys’ fees and expert
11 witness costs, as authorized by Code of Civil Procedure, § 1021.5 and any other applicable
12 provisions of law.

13 C. For such other legal and equitable relief as this Court deems appropriate and just.

14 DATED: March 30, 2017

Respectfully submitted,

15 

16 _____
17 Trent W. Orr (State Bar No. 77656)
18 Andrea A. Treece (State Bar No. 237639)
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25 *Attorneys for Petitioner*


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VERIFICATION

I, Brigid McCormack, hereby declare:

I am Vice President, Pacific Flyway, at the National Audubon Society, a non-profit corporation with offices in San Francisco, California and elsewhere in the United States. The facts alleged in the above Petition are true to my personal knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on this 29th day of March 2017 at San Francisco, California.



BRIGID McCORMACK

EXHIBIT A



March 29, 2017

Via Certified U.S. Mail, Return Receipt Requested

Jack Crider, Executive Director
Humboldt Bay Harbor, Recreation and Conservation District
601 Startare Drive
Eureka, CA 95501


Re: Notice of Intent to File California Environmental Quality Act Petition

To the Humboldt Bay Harbor, Recreation and Conservation District:

PLEASE TAKE NOTICE, under Public Resources Code section 21168.5, National Audubon Society and California Waterfowl Association intend to file a verified petition for writ of mandate against the Humboldt Bay Harbor, Recreation and Conservation District in Humboldt County Superior Court. The petition challenges the Harbor District's approval of Coast Seafoods Company's Humboldt Bay Shellfish Aquaculture Permit Renewal and Expansion Project without complying with the California Environmental Quality Act.

The petition seeks a writ of mandate to compel the Humboldt Bay Harbor, Recreation and Conservation District to comply with CEQA. A copy of the petition is enclosed.

DATED: March 29, 2017



Trent W. Orr
Staff Attorney
Earthjustice

EXHIBIT B

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5 *Attorneys for Petitioners*

6
7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF HUMBOLDT

10 NATIONAL AUDUBON SOCIETY and
CALIFORNIA WATERFOWL ASSOCIATION,

11 Petitioners,

12 v.

13 HUMBOLDT BAY HARBOR, RECREATION AND
14 CONSERVATION DISTRICT,

15 Respondent.

16
17 COAST SEAFOODS COMPANY, and DOES I
through V,

18 Real Parties in Interest.

Case No.

**NOTICE TO ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA OF
VERIFIED PETITION FOR WRIT OF
MANDATE**

19
20
21 To the Attorney General of the State of California:

22 PLEASE TAKE NOTICE that under California Public Resources Code section 21167.7 and
23 California Code of Civil Procedure section 388, Petitioners NATIONAL AUDUBON SOCIETY and
24 CALIFORNIA WATERFOWL ASSOCIATION will file the attached verified petition for writ of
25 mandate under the provisions of the California Environmental Quality Act, California Public
26 Resources Code section 21000, *et seq.* (CEQA) against Respondent HUMBOLDT BAY HARBOR,
27 RECREATION AND CONSERVATION DISTRICT, and Real Parties in Interest COAST
28

1 SEAFOODS COMPANY, and DOES I through V, in Humboldt County Superior Court on
2 March 30, 2017.

3 The petition challenges the Humboldt Bay Harbor, Recreation and Conservation District's
4 actions in approving Coast Seafoods Company's Humboldt Bay Shellfish Aquaculture Permit
5 Renewal and Expansion Project without complying with CEQA.

6
7 DATED: March 29, 2017

Respectfully submitted,

8
9 

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1 **PROOF OF SERVICE**

2 I, John W. Wall, hereby declare:

3 I am over the age of 18 years, not a party to this action, and employed by Earthjustice in the
4 County of San Francisco, State of California. My business and mailing address is 50 California
Street, Suite 500 San Francisco, California 94111.

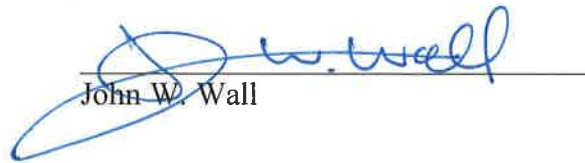
5 On March 29, 2017, I served a copy of the following documents described as:

6 **NOTICE TO ATTORNEY GENERAL OF THE STATE OF CALIFORNIA**
7 **OF VERIFIED PETITION FOR WRIT OF MANDATE**
8 **and**
9 **VERIFIED PETITION FOR WRIT OF MANDATE**

10 by addressing the envelopes as set forth below, placing a true and correct copies of the above
11 mentioned documents in a sealed envelope with postage affixed hereon fully prepaid in the United
States mail following this organization's ordinary practices with which I am readily familiar.

12 Office of the Attorney General
13 1300 "I" Street
Sacramento, CA 95814-2919

14 I declare under penalty of perjury of the laws of the California that the foregoing is true and correct
and that this was executed on March 29, 2017, in San Francisco, California.

15
16 
17 John W. Wall