



IN REPLY REFER TO:

# United States Department of the Interior

## NATIONAL PARK SERVICE

Point Reyes National Seashore  
Point Reyes, California 94956

L1425  
02-106

June 18, 2004

Robert Treanor, Executive Director  
State of California  
Fish and Game Commission  
1416 Ninth Street  
Sacramento, CA 95814

Re: Consent Item #32, Request of Tom Johnson, Johnson Oyster Company (JOC), Inc.  
For Lease Renewal of State Water Bottom Lease Agreements for M-438-01 and M-438-02, Drakes Bay, Marin County, June 24, 2004 Fish and Game Commission Meeting.

Dear Mr. Treanor and Commission Members:

We want to express our concerns regarding Consent Item #32, Request of Tom Johnson, Johnson Oyster Company (JOC), Inc. for 25 Year Lease Renewal of State Water Bottom Lease Agreements for M-438-01 and M-438-02, Drakes Bay, Marin County. The JOC operates under a Use and Occupancy Agreement with the National Park Service (NPS) that allows use of 1.47 acres for aquaculture facilities until the year 2012. This NPS Agreement requires JOC to meet all local, state and federal regulations and laws.

For background, the submerged leased lands proposed for renewal are within the boundaries of Point Reyes National Seashore (the submerged lands were ceded to the federal government in 1967), and Drakes Estero is a major natural resource of the national park. The Estero is also Congressionally-designated potential Wilderness and will convert to full Wilderness status in 2012.

For more than ten years, the National Park Service, the California Coastal Commission, and the County of Marin have worked with JOC to bring JOC into compliance with appropriate laws and regulations. Most of this effort has resulted in limited progress. The final result was a Stipulated Order (165361: 1997) from the Superior Court of California for Marin County requiring JOC to obtain all required permits, build proper septic systems, meet appropriate health and safety codes, and remove illegal structures. Under the Order, permitting by the Coastal Commission was required. If JOC did not

meet the conditions of the Order within 24 months, JOC was required to remove all illegal structures and cease operation. To-date, JOC has not completed most of the requirements of the Stipulated Order.

In December 2003, JOC was placed under a clean-up and abatement order from the California Coastal Commission (Cease and Desist Order No. CCC-03-CD-12) for unpermitted development and coastal impacts. JOC submitted a Removal and Restoration Plan to the Coastal Commission for approval in early June, but the plan has not been approved, and is, in our opinion, deficient in detail and timelines for removal. In addition, the removal of illegal buildings has not been completed.

The NPS notified JOC of our intention to cancel all use permits for the premises unless JOC meets the conditions of the Stipulated Order and the California Coastal Commission Cease and Desist Order.

In addition, the NPS conducted a site visit to the leased area in Drakes Estero on June 18, 2004. During the site visit, we observed the following: 1) approximately 30% of the oyster racks in the estuary were in dilapidated shape; 2) oyster bags strewn in the tide line area (one 100-yard stretch of shoreline had 23 unused 2' x 3' bags, equaling @ 25% of all bags present), 3) plastic and metal debris discarded in place and embedded in substrate; and 4) abandoned marine grade treated wood from oyster racks on the park's shoreline. See the attached photographs from the site visit. We believe a clean-up should occur and an assessment of the oysters be conducted before the lease is renewed for 25 years.

At this time, it seems prudent and in the best interest of the public to not undertake a renewal of any submerged lands until the current deficiencies are rectified with the California Coastal Commission, the County of Marin and the National Park Service. Therefore, we urge that a temporary extension be issued to JOC to resolve legal issues and ensure proper protections are in the new lease agreement. A temporary extension of six months to a year would give JOC time to show progress in meeting the conditions of the Court Order and the Coastal Commission Cease and Desist Order.

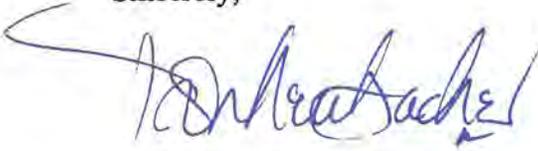
We ask that any interim agreement issued to JOC contain a clause that JOC meet the conditions of the Superior Court Stipulated Order and conditions set by the Coastal Commission in their Cease and Desist Order, and meet the site clean-up requirements of the National Park Service.

The Commission previously gave an extension to allow the Department of Fish and Game and other agencies to work towards a solution. We believe more time would ensure that all concerns by all parties are reduced or eliminated.

As we have discussed with representatives from the Department of Fish and Game, the NPS still believes that any activity in the Estero must also be permitted by the NPS. We have also requested clarification on how CEQA requirements are being met by the Department.

We appreciate being able to comment on this issue. We are also eager to work with the Department to come to a viable and collaborative solution. To that end, we would propose to meet with you to discuss the issue at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Don Neubacher". The signature is written in a cursive style with a long horizontal stroke extending to the left.

Don L. Neubacher  
Superintendent

Enclosures:

Cease and Desist Order, Coastal Commission, April 2004  
Marin County Superior Court Stipulated Order, March 1997  
Photos of Site Visit on Jun 18, 2004

cc:

County Counsel, Marin County  
California Coastal Commission