

State of California

**M e m o r a n d u m**

**To:** Robert R. Treanor  
Executive Director  
Fish and Game Commission

**Date:** June 14, 2004

**From:** **L. RYAN BRODDRICK, Director**  
**Department of Fish and Game**

**Subject:** Agenda Item for June 24-25 Fish and Game Commission Meeting Re:  
Request of Tom Johnson, Johnson Oyster Company, Inc., for Lease Renewal of  
State Water Bottom Lease Agreements for Numbers M-438-01 and M-438-02,  
Drakes Estero, Marin County

This item was originally heard at the Fish and Game Commission's (Commission) May 4, 2004, meeting in San Diego. At that meeting, the Commission approved a 90-day extension for the State Water Bottom Lease Agreements Numbers M-438-01 and M-438-02 and directed Mr. Tom Johnson and the Department of Fish and Game (Department) to address outstanding concerns raised by the National Park Service, Point Reyes National Seashore. Following the Commission's direction, the Department met with representatives of the National Park Service and the California Coastal Commission to resolve their concerns. Department staff also participated in a site visit at the Johnson Oyster Company facility. Agency staff from the National Park Service and the California Coastal Commission were in attendance at this site visit, as was Mr. Johnson. Based on conversations between the agencies and the Department during these meetings, the Department has agreed to recommend that the Commission include language within the renewed State Water Bottom leases that would make the lease contingent upon meeting and maintaining the applicable permitting and/or site operational practices, as regulated by the California Coastal Commission and other state and federal regulatory agencies.

It is not the intent of the Department to act as an enforcement arm of the California Coastal Commission or any other regulatory agency; rather, the Department agrees that Johnson Oyster Company should maintain facilities and operational practices that are in compliance with all state, federal, and local requirements. Should a regulatory agency take action resulting in a cessation of operations at the Johnson Oyster Company facility, it is the Department's position that the associated State Water Bottom Leases should also be withdrawn.

The subject leases, totaling 1,060 acres of state water bottom lease area, were established on June 1, 1979. Since then, the lessee has worked cooperatively with the Department on all aquaculture related issues. Mr. Johnson

Robert Treanor  
Page 2  
June 14, 2004

submitted written notification to indicate his interest in renewing the lease within the one-year time period stipulated in his lease. He has also indicated an interest in renewing the leases for the maximum twenty-five (25) year period. The Department supports the renewal of the leases and concurs with the requested twenty-five year renewal period. Johnson Oyster Company has been operating on National Park Service fee land in Point Reyes National Seashore under a 1972 Reservation of Use and Occupancy (Federal Reservation) in which Mr. Johnson, as a condition of his sale to the Park Service, reserved the right to operate an oyster farm for 40 years until 2012. However, there is some uncertainty whether the Federal Reservation will be extended. For this reason, the Department is recommending that the renewed leases be contingent upon there being a Federal Reservation in place.

Mr. Johnson has expressed overriding financial concern based on financial hardship with greatly increased rent. He agrees to increasing the annual lease rental rate for the 1,059 acre Lease M-438-01 from one (\$1) to three (\$3) dollars per acre at signing, to ten (\$10) the fourth year, to fifteen (\$15) the tenth year, and twenty (\$20) the fifteenth year. The lease rental rate for the one-acre Lease M-438-02 would be increased from ten (\$10) dollars per acre to twenty (\$20) dollars at signing. Mr. Johnson also agrees to including language that specifies that the Consumer Price Index and current lease rates would be considered by the Commission when evaluating the basis for a lease rate change. Any evaluation would be at the Commission's discretion and would occur no more frequently than every five years.

One (\$1) dollar per acre is the minimum annual rent for leases, such as lease M-438-01, that were established prior to 1983. At that time, the Legislature increased the minimum annual rent to two (\$2) dollars per acre for leases exceeding 10 acres in size. Both rates are well below the average rent based on the annual rate paid for all current Tomales Bay leases, established between 1976 and 1989 and for all current State Water Bottom leases (Table 1). The twenty (\$20) dollar per acre rent represents a mid-value between the average State Water Bottom lease rents in Tomales Bay and state-wide.

Mr. Johnson proposes no change in the culture methods or species currently approved by the Commission for the two leases. However, if the lease renewal is approved, lease amendments will include a requirement that the Lessee establish an escrow agreement in the amount of \$10,000 that provides a financial guarantee of growing structure removal and/or cleanup expense in the event the lease is abandoned or otherwise terminated. Mr. Johnson agrees to place in escrow seven thousand five hundred (\$7,500) dollars at signing and two thousand five hundred (\$2,500) at the one-year renewal anniversary.

Robert Treanor  
Page 3  
June 14, 2004

**Recommendation:**

The Department recommends approval of the requested lease renewals for a period of twenty-five years, contingent on there being a Federal Reservation for the land use within the Point Reyes National Seashore. The Department recommends the annual rental rate leases take into consideration the financial hardship expressed by Mr. Johnson and be subject to the stipulations discussed above. The Department also recommends that the lease be contingent on Johnson Oyster Company maintaining appropriate Coastal Zone operational practices as specified by the California Coastal Commission and other federal and state regulatory agencies.

If you have any questions or need additional information, please contact Mr. Eric Larson, Bays and Estuaries Ecosystem Coordinator in the Department's Marine Region, at (650) 631-6788.

File: Director, Deputy Director, Marine Region, Conservation Education Branch, E. Larson, T. Pederson, F. Spear, J. Milton, C. Ryan, Chron